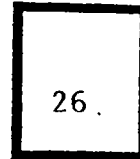


Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: **Informational Letter**

"Letter From Attorney Nancy Ramseyer" (Dated 03-03-1997)
(Concerning Documents That She Sent)

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury



**LAW OFFICES
LOS ANGELES COUNTY PUBLIC DEFENDER**

MENTAL HEALTH BRANCH

1150 NORTH SAN FERNANDO ROAD
LOS ANGELES, CALIFORNIA 90065
(213) 226-2932

MICHAEL P. JUDGE
PUBLIC DEFENDER

March 3, 1997

Atascadero State Hospital
Drawer "A"
Atascadero, CA 93422

Attention: Eli T. DelRay
CDC #D-53484

Dear Mr. DelRay:

I think this is everything you asked me to send. Please accept my
apologies for the delay.

Call me if I missed something.

Sincerely,

Nancy Ramseyer
Nancy Ramseyer
Deputy Public Defender

NR:gec

Enclosure

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE

27

EXHIBIT

Description of this exhibit: **Notification of Warrant**

"Warrant" per P.C. §3056 (Dated 01-20-98)

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☒ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

FROM: MCSL ISN: 3494 DATE: 01/20/98 TIME: 10:36:28 SNDR LID:
TO: MCER OSN: 2207 DATE: 01/20/98 TIME: 10:36:28 RCVR LID:

CHUTTON

CMCO
MSG:001
DAT:012098 TIM:0933 INI:TP*
ATTN: JAILER

45422-3

*****HOLD*****HOLD*****HOLD*****HOLD*****HOLD*****

CDC NAME: DELRAY, ELI T
BOOKED AS: SAME

CDC#: D53484 DOB: 08/10/58
BKG#: D53484

SEX: M RACE: B HAIR: BRO EYES: BRO HGT: 509 WGT: 150
CURRENT LOC: CMC UNIT: MDT1 PHONE: (213) 580-3421

Confidential

THIS IS AUTHORIZATION FOR DETAINING AGENCY, CALIFORNIA MEN'S COLONY,
AND ANY PEACE OFFICER IN THE STATE OF CALIFORNIA TO ARREST AND
BOOK PER *****3056 P.C. HOLD***** AND
TRANSPORT TO CALIF. MEN'S COLONY.

FOR GIGLIOTTI EX 3419

AUTH: TAYLOR
DEPARTMENT OF CORRECTIONS, REGION III

BADGE: 1326 UNIT: MDT1

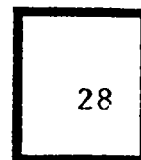
*Lunar City PG
600 E. 1st Ave
Evanston, IL
LA, CA 90017*

*ATTN:
RE BECCA*

NOTIFICATION

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: **DISCHARGE SUMMARY**
"Social Services Discharge Summary"

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☒ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

STATE OF CALIFORNIA HEALTH AND WELFARE AGENCY

DEPARTMENT OF MENTAL HEALTH

| | | | | |
|--|----------------------------------|--|------------------|--|
| DISCHARGE DATE <u>1/13/98</u> | ADMISSION DATE <u>5/23/96</u> | NAME/TRANSMITTING FACILITY <u>Atascadero State Hospital</u> | UNIT <u>3</u> | NAME/RECEIVING FACILITY (if applicable) <u>C.M.C.</u> |
| WILL LIVE AT <u>California New Colony San Luis Obispo</u> | Street <u></u> | City <u></u> | ZIP <u></u> | TELEPHONE NUMBER <u>()</u> |

CHECK AS MANY AS APPLY

| | | | | | | |
|---|--|--|--------------------------------------|---------------------------------------|-----------------------------------|---------------------------------------|
| STATUS <input type="checkbox"/> AWOL | <input type="checkbox"/> Penal Code | <input checked="" type="checkbox"/> Civil Hold <u>6600</u> | <input type="checkbox"/> Hold Expiry | <input type="checkbox"/> Writ Granted | <input type="checkbox"/> Vol | <input type="checkbox"/> (AMA) |
| FACILITY <input type="checkbox"/> Jail | <input checked="" type="checkbox"/> Locked | <input type="checkbox"/> Other Hosp | <input type="checkbox"/> SNF | <input type="checkbox"/> ICF | <input type="checkbox"/> B&C | <input type="checkbox"/> Halfway |
| PRIVATE RESIDENCE <input type="checkbox"/> Live Alone | <input type="checkbox"/> W/Friends | <input type="checkbox"/> W/Family, Rel | <input type="checkbox"/> Hotel | <input type="checkbox"/> Apt | <input type="checkbox"/> Own Home | <input type="checkbox"/> Regional Ctr |

PATIENT INCOME AND RESOURCES

| | | |
|---|--|---|
| SSA No <u></u> | Income Total Amount/Month \$ <u>4</u> | Status of Funding |
| Medi-Cal No <u></u> | <input type="checkbox"/> SSA | <input type="checkbox"/> Received |
| VA No <u></u> | <input type="checkbox"/> SSI | <input type="checkbox"/> Approved |
| <input type="checkbox"/> Trust Office will remain payee after discharge and must be notified of address changes | <input type="checkbox"/> AFDC | <input type="checkbox"/> Unemployment Fund |
| Payee <input checked="" type="checkbox"/> PT <input type="checkbox"/> Cons <input type="checkbox"/> Other (Below) | <input type="checkbox"/> MNO | <input type="checkbox"/> Retirement Fund |
| | <input type="checkbox"/> DIB | <input checked="" type="checkbox"/> Private Funds |
| | <input type="checkbox"/> VA Disability | <input type="checkbox"/> No Funds— |
| | <input type="checkbox"/> GI Bill | <input type="checkbox"/> Need to File |
| | | <input type="checkbox"/> Lives with others |

CONSERVATOR/GUARDIAN/CARE PROVIDER/SIGNIFICANT OTHERS

| RELATIONSHIP OR AGENCY | NAME AND ADDRESS | PHONE NUMBER | NOTIFIED OF DISCHARGE? |
|-------------------------------|--------------------|---------------------|---|
| <u>Regional Public Center</u> | <u>Mark Taylor</u> | <u>213 897-1027</u> | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |
| <u>Regina III</u> | <u></u> | <u>()</u> | <input type="checkbox"/> YES <input type="checkbox"/> NO |

REFERRALS

| | | | |
|---|-------------------------|-------------------------|--------------|
| PRIMARY AGENCY—Name | Address | Date/Time of First Appt | PHONE NUMBER |
| | | | () |
| OTHER AGENCY REFERRALS (Agency and Address) | PERSON TO WHOM REFERRED | PHONE NUMBER | |
| | | () | |

AFTER CARE PLAN: See Also Medical/Nursing Pt. participated in plan ☐ YES ☐ NO If not indicate why in narrative

Patient Needs IN — Agrees (A) — Refuses (R)

| N | A | R | Psycho-Social Casework | N | A | R | Legal/Ed/Work/Financial | N | A | R | Living Quarters |
|-------------------------------------|--------------------------|--------------------------|---------------------------------|--------------------------|--------------------------|--------------------------|--------------------------------|--------------------------|--------------------------|--------------------------|-------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Family Planning | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Get ID Card | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Move to New Quarters |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Family Treatment | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Legal Aid Services | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Tel/Utility Services |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Day Treatment Program | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Special Ed/Adult Ed/College | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Attendant Care Services |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Substance Abuse Program | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Sheltered Work/Vol Work/Job | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Consultation to Family |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Social Recreational Activity | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Vocational Eval and Counseling | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Misc |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Individual and/or Group Therapy | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Budget Assistance | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Misc |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Outreach Field Services | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Obtain Funds/Benefits Above | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |

HISTORY OF DANGEROUS/THREATENING BEHAVIOR ☐ NO ☒ YES ☐ SELF ☒ OTHERS ☐ PROPERTY

Narrative/Explanations: Pt. Delaney is being psych eval.

Pt. Delaney was found in possession of marijuana at A.S.H. on 1/13/98.

Pt. has been verbally hostile to staff. He has been sexually inappropriate with female staff, masturbating exposing himself to female staff. He has been physically aggressive and belligerent to staff. In Feb 1997

| | | | |
|-----------------------|-----------------------|----------------|---------------------|
| NAME (Print) | Signature | DATE | PHONE NUMBER |
| <u>Laurie Serrano</u> | <u>Laurie Serrano</u> | <u>1/21/98</u> | <u>415 468-2193</u> |

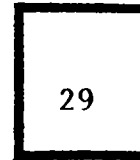
SOCIAL SERVICES DISCHARGE SUMMARY OR RECOMMENDED CONTINUING CARE PLAN

Confidential Patient Information
See /W&I Code Section 5328

DELICAT, ELLIOTT
AT 045422-3 H SGL HC CTP
05-23-96 LA STPH 8601.3
08-10-98 CH EL LA
051-50-5320 PIC 650
08-05-96 LA VPI 111001

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: **HOLD DOCUMENTS**

"Hold Receipt" Dated: 1-21-98
(Originally issued on 06-14-96)

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☒ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

HOLD RECEIPT

1-21-98

I hereby acknowledge receipt of:

_____ Abstract of Judgement

XX _____ Commitment _____ Warrant

_____ Detainer _____ Notification

dated 6-14-96 Issued by LOS ANGELES COUNTY SUPERIOR COURT

SC #ZM001979

reference CDC #D-53484

for violation of _____

Confidential
Patient's Copy

concerning patient DELRAY, ELI AT 045422-3

**** THIS PATIENT HAS AN OUTSTANDING COMMITMENT (SVPE6600) TO
ATASCADERO STATE HOSPITAL AND MUST BE RETURNED TO THIS
FACILITY UPON COMPLETION OF HIS PRISON TERM**

Deputy or Officer

County

Date

Releasing Personnel

Date

HID/PAD:RAR

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE

30

EXHIBIT

Description of this exhibit: BPT HEARING SUMMARY
SUMMARY OF REVOCATION HEARING AND DECISION

Pg. 1 "Preliminary Information"
Pg. 2 "Summary of Findings"
Pg. 3 "Reason for Decision"
Pg. 4 "Summary of Disposition"
(Date of Hearing 03-06-98)

Number of pages to this Exhibit: 4 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☒ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

SUMMARY OF REVOCATION HEARING AND DECISION

(BPT Rules, Chapter 6, Article 3)

| | |
|--------------------------------|--------------|
| PAROLE REVOCATION RELEASE DATE | PRRD 6-21-78 |
| CONTROLLING DISCH. DATE | 6-20-99 |
| DISCH. REVIEW DATE | DR 6-29-79 |

I. PRELIMINARY INFORMATION

| | |
|--|--|
| A. TYPE OF HEARING <input checked="" type="checkbox"/> Revocation <input type="checkbox"/> Revocation Extension <input type="checkbox"/> Revocation: Psychiatric Treatment <input type="checkbox"/> Prerevocation | B. LOCATION OF HEARING: CMC-E Parolee in Custody at time of Hearing <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| C. BASIS FOR CHARGES ASH REPORT <input checked="" type="checkbox"/> Parole Violation Report, dated 1/23/98 <input type="checkbox"/> Other _____ _____ dated _____ | D. OPTIONAL WAIVER <input type="checkbox"/> Yes <input type="checkbox"/> No Date signed by parolee _____ Date of BPT action _____ Assessment _____ <input type="checkbox"/> Ineligible <input type="checkbox"/> Eligible (Check one) |

E. LEGAL DATA

- ☐ The crime for which the parolee was committed to prison occurred on or before 12-31-78.
☐ The crime for which the parolee was committed to prison occurred on or after 1-1-79.

Date of arrest on current parole violation charge(s) _____

Date hold was placed on current parole violation charge(s) _____

F. PRESENT AT HEARING

1. ☒ Parolee (If parolee absent, why?) _____
 2. ☒ Hearing Officer(s) David Bruce (NAME)
 3. ☐ Attorney ☐ Waived ☒ Disapproved Name _____
 4. ☐ Agent of Record _____ (NAME OR REASON IF NOT PRESENT)
 5. ☒ Hearing Agent Whittemore (NAME OR REASON IF NOT PRESENT)
 6. ☒ Observer(s) C.O. Baldwin C.O. Padilla Security (NAME AND ORGANIZATION)

G. WITNESSES

| Present | | Name | Notified | | Wit. Desig.** | | If absent, state specific reason. |
|-------------------------------------|----|--------------------------|----------|------|---------------|------|-----------------------------------|
| Yes | No | | Meth. | Date | Stat. | Req. | |
| <input checked="" type="checkbox"/> | | T. LAWHORN, PSYCH. TECH. | M | 2/24 | A | S | Testified |
| <input checked="" type="checkbox"/> | | L. PETERS, PSYCH. TECH. | M | 2/24 | A | S | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

***NOTIFICATION METHOD**

M = Memo PC = Personal Contact
 L = Letter Sp = Subpoena
 Ph = Phone TT = Teletype

****USE ABBREVIATION FOR WITNESS DESIGNATION:**

Status: A = Adverse Requested By: S = State
 F = Friendly P = Parolee
 V = Victim

NAME DEL REY, ELI CDC NUMBER D-53484 INST/REGION MDT#1 /3 HEARING DATE 3/06/98

WHITE-C FILE
 CANARY-BPT
 PINK-PAROLEE
 GOLDENROD-AGENT OF RECORD

PERMANENT ADDENDA

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

SUMMARY OF REVOCATION HEARING AND DECISION**I. Preliminary Information (Cont.)**H. HEARING ☐ CANCELLED ☐ POSTPONED

REASON:

☐ Atty. Unavailable
☐ Parolee Unavailable
☐ Witness Unavailable

☐ Parolee Ref'd to Prison
☐ Parolee Signed Waiver
☐ Parolee Request

☐ Interpreter Needed
☐ Psych. Evaluation
☐ Add'l. Witness/Testimony

☐ Other: _____

Specify witnesses/documents needed for next hearing: _____

I. OBJECTIONS ☒ None ☐ Yes State objections (s) and panel's ruling and reasons on continuation sheet.**II. SUMMARY OF FINDINGS****A. ADMISSIONS/DENIALS AND FINDINGS****1. Charges****2. Plea****3. Findings**

| Charge# | Code | Brief Description of Conduct | Admit | Deny | No Plea | Good Cause | No Good Cause | Dismiss |
|---------|------|--------------------------------------|-------|------|---------|------------|---------------|---------|
| 1 | 727 | POSSESSION OF MARIJUANA (ASH REPORT) | | X | | X | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

4. Charges Amended to Read (Complete 5 below)

| Charge# | Code | Brief Description as Amended | Amended Prior to Plea | Prior to Finding |
|---------|------|------------------------------|-----------------------|------------------|
| | | | | |
| | | | | |
| | | | | |

5. Reason for amending Charges (Show charge # and reason): _____

NAME DEL REY, ELI

CDC NUMBER D-53484

INST/REGION MDT#1 /3
CMC-EEHEARING DATE
3/06/98

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

SUMMARY OF REVOCATION HEARING AND DECISION

III. REASON FOR DECISION

Basis for Conclusion:

Charge #1, Possession of Marijuana - Good Cause
 Found - Witness testified that they
 found a marijuana cigarette in [his]
 eye glass case in his locker area.
 Marijuana was tested and positive for
 marijuana.

Basis for Disposition:

[his] commitment phase is Indefinite
 Exposure. He has stayed ASH since
 his release on parole. He continues
 treatment at ASH. This is a
 serious institutional violation.
 RTC is needed.

RTC Eight (8) mo (E)

INMATE COPY

NAME DEL REY, ELI CDC NUMBER D-53484

INST/REGION MDT#1 /3

HEARING DATE

3/06/98

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

SUMMARY OF REVOCATION HEARING AND DECISION

IV. SUMMARY OF DISPOSITION

- A. ☒ Hold Status:
 1. ☐ Place Hold 2. ☒ Retain Hold
 3. ☐ Remove Hold Not Later Than _____ (DATE)
- B. ☐ Remaining Period of Parole Waived
 Discharge Effective _____ (DATE)
- C. ☐ Continue on Parole
- D. ☒ Parole Revoked. Return to Custody
Eight Months
- E. ☐ Parole Revocation Period Extended:
 _____ days
- F. ☐ Parole Revoked. Return to Custody
 _____ Months for Psychiatric Treatment
- G. Eligibility for Credits
☒ Eligible ☐ Ineligible
 Reason for Ineligibility (PC§3057(d)(2):
☐ Commitment offense (Specify) _____
☐ Revocation offense (Specify) _____
☐ Violation of parole condition (Specify) _____
☐ Sentenced under PC §1168 (Specify) _____
☐ Unsuitable for credits because of PC §3057 (d)(2)(E)
☐ Prior criminal history
☐ Circumstances and gravity of parole violation
 Specify reason: _____

H. Optional Waivers

☐ Previous BPT Action of _____ is:
 (DATE)

 1. ☐ Rescinded 2. ☐ Reaffirmed

 I. ☐ Other _____
 (SPECIFY)
J. ☒ Special Conditions of Parole☒ All current conditions reaffirmed

| | No Alcohol | ANT | POC | Other |
|---------|------------|-----|-----|-------|
| Added | | | | |
| Deleted | | | | |

K. Instructions to CDC Staff/Reasons for special conditions of parole:

BPT HEARING PANEL

NAME:

David Bruce

NAME:

DECISION REVIEWED BY:

REVOCATION HEARING TIME (MINUTES)

1. Prehearing Prep. Time: *14 min*2. Actual Hearing Time: *38 min*3. Report Completion Time: *13 min*4. Other (Specify): *10 min waiting*

Total _____

NAME DEL REY, ELI CDC NUMBER D-53484

INST/REGION MDT#1 /3

HEARING DATE

3/06/98

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: CDC 128 G Chrono

"Institution Classification Committee Hearing Chrono"
(Date of Hearing 03-19-98)

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☒ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

No. D-53484 Name: DELF ELI Room/Bed: 4329 PRRD 6/29/98 CS: 0
 Custody: MAX-BR Annual: Assignment: AD SEG
 WG: D1 PG: D Cat: W/L: Level: 1
 RX: RELEASE TO AQ-GP. REFER TO THE CSR RX RETAIN AT CMC-E, LEVEL 1 OVERRIDE (SVP)

I/M DELRAY appeared before ICC this date for a 30 Day Ad Seg Review and Placement Review. S was placed in Ad Seg on 1/21/98 upon his arrival at CMC-E from ASH due to inappropriate, hostile, and inappropriate sexual behavior demonstrated at ASH staff. Comm. notes S was on parole at ASH awaiting his SVP prosecution per W&I 6601.3. However, Marijuana was found in S's room at ASH and S was returned to CMC-E as a PVRTC awaiting BPT Revocation Hearing on a PC3056 hold. Comm. notes that S's BPT Revocation was on 3/6/98. Good cause was found for Poss. of Marijuana and BPT assessed S 8 mo eligible. Comm. elects to release S to the A-Quad GP as S is not deemed a threat to the safety and security of the institution at this time. S will be placed in WG:A2, PG:B CUST:MED-AR and placed in the Support Services waiting list upon his release to the GP. Fac. Cpt. Pete Gallagher notified of ICC action. Comm. elects to refer this case to the CSR with RX: Retain CMC-E on Level 1 Override for SVP processing. S was reviewed and cleared for Reintegrated Mixed yard placement. S is a 39 yr old, 3rd T

Date: 3/1998 Institution Classification Committee In Person Inst: CMC-E / D-Quad Pg. 1

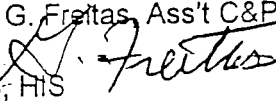
STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC-128G (Rev 2/69)

No. D-53484 Name: DELRAY, ELI Room/Bed: 4329

committed from LA Co. for Indecent Exposure. S was a PVRTC w/PV charges of Poss. of Marijuana while housed at ASH. S received in CDC on 1/21/98 from ASH for Parole Revocation Proceedings. No arsons or escapes noted. Holds: ASH on the charge of SVP based on Warrant # ZM001979. Abnormal sexual behavior noted in 1975 conviction in State of Ohio for Rape and a 1987 CDC commitment of Child Molestation. CDC 812 is noted for enemy concerns. There are no gang/TIP affiliations noted. Confidential File is clear. TB Code: 22 per 128-C dated 1/29/98. CCF/ MSF/ CCRC/Camp ineligible due to PVRTC, SVP hold, and PC290 registration. As S's placement in Ad Seg is for the safety and security of the institution, S will be retained on Non-Contact Visiting Status. S acknowledged understanding of the above Comm. action and concurred w/Comm. action. (G. FREITAS/kr)


 COMM: G. Souza, CDW, Chairperson; T. McAlister, AWPS; D. E. Freehauf, AWC&T; K. Weaver, Chief Psych; Brad Evans, LCSW; Lt. Barrera; G. Freitas, Ass't C&PR, Recorder;

CC: Inmate, Quad, CSR, CCRS; HIS 

Date: 3/1998 Institution Classification Committee In Person Inst: CMC-E / D-Quad Pg. 2

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC-128G (Rev 2/69)

No. D-53484 Name: DELRAY, ELI Room/Bed: 4329

Date: 3/1998 Institution Classification Committee In Person Inst: CMC-E / D-Quad Pg. 3

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE

32

EXHIBIT

Description of this exhibit: CDC 128G Chrono

"Initial Classification Committee Hearing Chrono"
(Date of Hearing 04-16-98)

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☒ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC-128G (Rev. 2/69)

No. D53484

Name: DELRAY, ELI

Room/Bed: 4230

PRRD 06/29/98 CS: 0

Custody: MED-AR Annual: 10/98

Assignment: U/A

WG: A2

PG: B

Cat:

W/L: S

RX: PC 3003 LOS ANGELES COUNTY; NO F.V.

S appeared before the Classification Committee this date for Initial Classification. 2930 PC complied with and 2933 PC explained. S is a 42 yr. old, Black, third term, committed from Los Angeles County for Indecent Exposure W/Prior. S is PVRTC with PV charges of Poss. Marijuana while housed at Atascadero State Hospital. S was originally received in CDC on 4/8/87 and RTC for PC 3141 (one count) and PC 288 (three counts) while awaiting SVP prosecution and received at CMC-E on 1/28/98 from ASH for Level III housing. Education: high school graduation with some college. TABE: 12.9. Work skills: printer, mechanic. S was unassigned prior to transfer and is placed in WG:A2, PG:B, effective 3/20/98 to assignment. No computer crimes, forgery, or fraud noted. A review of the C-file indicates a hold from Atascadero State Hospital, warrant #ZM001979. No escapes or arson. Per direction of CDC headquarters, S's C-file has been reviewed relative to escape potential and Close B custody. Under current guidelines, review indicates S does not meet the criteria for Close B custody. Aberrant sexual behavior noted in a 1975 conviction in Ohio for Rape and 1987 CDC term for Child Molestation. The need for 'R' suffix has been substantiated and deemed appropriate. Per POR dated 10/21/93, page five, 8/21/74 entry from Cleveland, Ohio noted on 4/8/75 S was convicted of PC 1199/20907.2, Rape (two counts) and PC 1199/20907.05, Gross Imposition Sex Offense (one count) where he was sentenced to 7

Date: 04/16/98

INITIAL CLASSIFICATION

In Person

Inst: CMC-E / B-Quad Pg 1

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC-128G (Rev 2/69)

No. D53484

Name: DELRAY, ELI

Room/Bed: 4230

to 25 years on each rape counts and 2 to 5 years on Gross Sex Imposition Charge. He was received at the State Reformatory in Ohio on 9/25/75 and paroled on 9/11/80. He had a PV/Warrant issued on 5/11/81. Victim was a family member. Substance abuse history involves the use of marijuana, rock cocaine, and PCP. No medical concerns. No enemy concerns. No Gang/TIP affiliations. Confidential file is clear. S is ineligible for CCF/MSF/CCRC due to PVRTC status, SVP holds, and 290 PC registration. Per Assembly Bill 614/PC 3003 S is required to parole to the county of last legal residence; Per POR, S's last legal residence was Los Angeles County. Per CCR 3174(e)(2), S is ineligible for overnight family visit due to PC 288. Registration required per PC 290. TB:22 per CDC 128-C dated 1/29/98. {Trask, sko}

COMM. MEMBERS: S. CARPENTER, F.C., CHAIRPERSON; C. BETHEL, CCII; C. TRASK, CCI, RECORDER; J. RANSEN, EDUC.; R. BAJIMA, IAO

CC: INMATE, CCI, CCRS, HIS, VISITING LT.

Date: 04/16/98

INITIAL CLASSIFICATION

In Person

Inst: CMC-E / B-Quad Pg 2

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC-128G (Rev 2/69)

No. D53484

Name: DELRAY, ELI

Room/Bed: 4230

Date: 04/16/98

INITIAL CLASSIFICATION

In Person

Inst: CMC-E / B-Quad Pg 3

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE

33

EXHIBIT

Description of this exhibit: **Parole Violator Worktime Credit System**

"Legal Status Summary Sheet"
(Dated: 04-29-98)

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☒ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

33817
Cash

JSOP55 PAROLE VIOLATOR WORKTIME CREDIT SYSTEM 04/29/98
 PAROLE VIOLATOR LEGAL STATUS SUMMARY PAGE: 1
 DC NO: D53484 NAME: DELRAY, ELI, TONY PAR STS: PRTC LOC: CMC
 ORIGINAL PAROLE DATE: 05/30/1995 PAL TIME : TOT PRV REV TIME: 300
 PAROLE PERIOD : 3 PREV DEAD TIME: PREV HOLD CR :
 EMPER/SOSA CREDITS : DCH REVIEW DATE:
 ARREST/HOLD DATE : 01/20/1998 HOLD CREDITS: DEAD TIME:
 MRRD: 09/17/1998 CDD : 05/30/1999

EVOCATION TIME 240 WORK ELIG Y BEGIN DATE 01/20/1998 END DATE 06/28/1998

| RAN YPE | DATE | END DATE | LOG NUMBER | RULE NUMBER | VIOLATION CATEGORY | DAYS |
|------------|------|----------|---------------|----------------|-----------------------|------|
|------------|------|----------|---------------|----------------|-----------------------|------|

| | | | | | | |
|----|------------|------------|--|--|--|------|
| CG | 01/20/1998 | 06/28/1998 | | | | 36.0 |
|----|------------|------------|--|--|--|------|

TO BALANCE # 0 AS OF / /

P)RRD 06/29/1998 BASED ON CREDIT APPLIED THRU 04/01/1998 , WORK GRP A2

60 dy

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE

34

EXHIBIT

Description of this exhibit: **PAROLE CONDITIONS**
"Notice and Conditions of Parole"
(Dated: 05-05-98)

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☒ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

STATE OF CALIFORNIA
CDC 1515 (3/92)DEPARTMENT OF CORRECTIONS
DIST: ORIG - CENTRAL FILE
COPY - PAROLE AGENT
COPY - PAROLEE / INMATE**NOTICE AND CONDITIONS OF PAROLE**

You will be released on parole effective 6-29-98, 19____ for a period of THREE YEARS. This parole is subject to the following notice and conditions. Should you violate conditions of this parole, you are subject to arrest, suspension and/or revocation of your parole.

You waive extradition to the State of California from any state or territory of the United States or from the District of Columbia. You will not contest any effort to return you to the State of California.

When the Board of Prison Terms determines, based upon psychiatric reasons, that you pose a danger to yourself or others, the Board may, if necessary for psychiatric treatment, order your placement in a community treatment facility or state prison or may revoke your parole and order your return to prison.

You and your residence and any property under your control may be searched without a warrant by an agent of the Department of Corrections or any law enforcement officer.

If another jurisdiction has lodged a detainer against you, you may be released to the custody of that jurisdiction. Should you be released from their custody prior to the expiration of your California parole, or should the detainer not be exercised, you are to immediately contact the nearest Department of Corrections' Parole and Community Services Division Office for instructions concerning reporting to a parole agent.

You have been informed and have received in writing the procedure for obtaining a Certificate of Rehabilitation (4852.21 PC).

You have read or have had read to you this notification and the following Conditions of Parole and understand them as they apply to you.

CONDITIONS OF PAROLE

1. SPECIAL CONDITIONS: You are subject to the following special conditions:

(1) ANTI-NARCOTIC TESTING (2) PAROLEE OUT PATIENT CLINIC
(3) A PLETHORA OF CONDITIONS TO BE SET BY PA GOVERNING PAROLEE'S CONTACT WITH CHILDREN AND PORNOGRAPHY.

Reasons for the imposition of special conditions of parole:

SIGNATURE OF UNIT SUPERVISOR

DATE

2. RELEASE, REPORTING, RESIDENCE AND TRAVEL: Unless other arrangements are approved in writing, you will report to your parole agent on the first working day following your release. Any change of residence shall be reported to your parole agent in advance. You will inform your parole agent within 72 hours of any change of employment location, employer or termination of employment.

3. PAROLE AGENT INSTRUCTIONS: You shall comply with all instructions of your parole agent and will not travel more than 50 miles from your residence without his/her prior approval. You will not be absent from your county of residence for a period of more than 48 hours and not leave the State of California without prior written approval of your parole agent.

4. CRIMINAL CONDUCT: You shall not engage in conduct prohibited by law (state, federal, county or municipal). You shall immediately inform your parole agent if you are arrested for a felony or misdemeanor crime. Conduct prohibited by law may result in parole revocation even though no criminal conviction occurs.

5. WEAPONS: You shall not own, use, have access to, or have under your control: (a) any type of firearm or instrument or device which a reasonable person would believe to be capable of being used as a firearm or any ammunition which could be used in a firearm; (b) any weapon as defined in state or federal statutes or listed in California Penal Code Section 12020 or any instrument or device which a reasonable person would believe to be capable of being used as a weapon as defined in Penal Code Section 12020; (c) any knife with a blade longer than two inches, except kitchen knives which must be kept in your residence and knives related to your employment which may be used and carried only in connection with your employment; or (d) a crossbow of any kind.

6. You shall sign the parole agreement containing the conditions of parole specified in Board of Prison Terms (BPT) Rules Section 2512 and any special conditions imposed as specified in BPT Rules Section 2513.

I have read or have had read to me and understand the conditions of parole as they apply to me.

| | | | | |
|---|---|-----------------------|--|------|
| CDC NUMBER <u>D-53484</u> | PAROLEE'S SIGNATURE <u>[Signature]</u> | DATE <u>5-5-98</u> | SIGNATURE OF CDC STAFF <u>[Signature]</u> | DATE |
| PAROLEE'S NAME (PRINT OR TYPE) <u>DELRAY, ELLI</u> | | | STAFF'S NAME (PRINT OR TYPE) <u>TRASK CCI</u> | |

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE

35

EXHIBIT

Description of this exhibit: **LEGAL STATUS SHEET**

"Holds and Notifications" Legal Status
(Dated: 05-12-98 for 05-25-00)

**** Shows a new Hospital AT Number, 047830-3 ****

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☒ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

LEGAL STATUS

HOLDS & NOTIFICATIONS u12

SVPP DATE: 5-25-00
SVPE DATE: 5-12-98 **SC #:** ZM001979 **CDC#** D-53484
DEPT: 95
COUNTY OF COMMITMENT: LOS ANGELES
CRIMINAL OFFENSE: 000 BCS

Confidential
Patient's Copy

NOTIFICATION:

Notify of any change in status:
State of California, Board of Prison
Terms, Scheduling Coordinator,
(916)327-5947 6/15/98 rar
Released 2-3-99 ncg

NOTIFICATION:

Notify of any change in status:
Parole & Community Services
Inner City Parole Unit
600 St. Paul Ave., Suite 202
Los Angeles, CA 90017
Phone: (213)580-3142 Ext. 3419
7-2-98ac

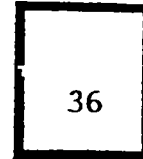
NOTIFICATION:

Notify of any change in status:
Parole Region 3, SVP Coordinator,
Marion McCrary
107 S. Broadway, Rm. 3007
Los Angeles, CA 90012-4447
(213) 897-8865
FAX: (213) 897-3300 4/8/99 ncq
Notified by v/m 5-21-99 LL

DELRAY, ELI TONY
AT 047930-3
ATASCADERO STATE HOSPITAL

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: **"AMENDED" PETITION FOR COMMITMENT**

- A. **"Amended Petition for Commitment as a Sexually Violent Offender"** (3 pages)
- B. **"Affidavit in Support of Amended Petition"** (3 pages)

Number of pages to this Exhibit: 6 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

1 GIL GARCETTI
District Attorney
2 of Los Angeles County
By: REBECCA MARIE MADRID
3 State Bar No. 149276
Deputy District Attorney
4 Sexually Violent Predator Unit
320 West Temple Street, Suite 740
5 Los Angeles, California 90012
Telephone: (213) 974-5927
6 Attorney for Petitioner
7
8

ORIGINAL FILED

AUG 06 1999

SUPERIOR COURT

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11

12) Case Nos. ZM001979
13) A766947
14) AMENDED PETITION FOR
15) COMMITMENT AS A SEXUALLY
16) VIOLENT OFFENDER PURSUANT TO
17) WELF. & INST. CODE, § 6250 ET SEQ.
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

16 ELI TONY DELRAY,
17 CDC NO. D53484,

Respondent.

DATE: AUGUST 5, 1999
TIME: 9:00 A.M.
DEPT: 95

20 TO THE HONORABLE HAROLD E. SHABO, JUDGE OF THE SUPERIOR
21 COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS
22 ANGELES:

23 Rebecca Marie Madrid, Deputy District Attorney, does hereby petition this court
24 as follows:

25 ELI TONY DELRAY has been convicted of, and received a determinate sentence
26 for, the following sexually violent offenses within the meaning of Welfare and Institutions Code
27 section 6600, subdivisions (b) and (e):
28 ///

| <u>CASE NO.</u> | <u>CHARGE</u> | <u>DATE OF CONVICTION</u> | <u>DATE OF SENTENCE</u> |
|---------------------|---|---------------------------|-------------------------|
| CR 15641 [Ohio] | RC § 2907.02 [2 counts] (Rape) | 3/20/1975 | 4/08/1975 |
| CR 15641 [Ohio] | RC § 2907.05 [1 count] (Gross Sexual Imposition) | 3/20/1975 | 4/08/1975 |
| A766947 [Calif.] | Pen. Code, § 288, subd. (a) [3 counts] (Lewd Act upon a Child) | 1/29/1987 | 2/24/1987 |

That said person has a diagnosed mental disorder, and poses a danger to the health and safety of others, and is predatory within the meaning of Welfare and Institutions Code section 6600, subdivisions (c) through (e).

That the Director of Corrections and the Board of Prison Terms, at least six months prior to the person's scheduled date of release from prison or termination of parole, screened said person as to whether the person committed a sexually violent predatory offense, reviewed his social, criminal and institutional history within the meaning of Welfare and Institutions Code section 6601, subdivision (b). As a result of the screening, the Department of Corrections determined the person is likely to be a sexually violent predator and referred the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Welfare and Institutions Code section 6600.

That the State Department of Mental Health evaluated the person in accordance with a standardized assessment protocol to determine whether the person is a sexually violent predator within the meaning of Welfare and Institutions Code section 6601, subdivision (c), and;

[✓] That the Director of the State Department of Mental Health designated two practicing psychiatrists or psychologists or one practicing psychiatrist and one practicing psychologist, who evaluated the person and determined that the person has a diagnosed mental disorder such that he is likely to engage in acts of sexual violence without appropriate treatment and custody within the meaning of Welfare and Institutions Code section 6601, subdivisions (c) and (d).

///

1 [] That two independent professionals have been appointed to evaluate the person
2 pursuant to Welfare and Institutions Code section 6601, subdivisions (a) through (g), and they
3 concur that the person meets the criteria for commitment specified in Welfare and Institutions
4 Code section 6601, subdivision (d).

5 That the evaluation report prepared by the State Department of Mental Health and
6 reports prepared by the above evaluators appointed pursuant to the above and in support of this
7 Amended Petition are attached hereto and incorporated by reference herein.

8 WHEREFORE, the People of the State of California petition this court to
9 determine that there is probable cause to believe that ELI TONY DELRAY is likely to engage in
10 sexually violent predatory criminal behavior upon his release from custody and to order a trial to
11 be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a
12 danger to the health and safety of others in that the person is likely to engage in acts of sexual
13 violence upon his release from the jurisdiction of the Department of Corrections.

14
15 Dated this 5th day of August, 1999.

16 Respectfully submitted,

17 GIL GARCETTI
18 District Attorney
19 of Los Angeles County

20 By 

21 REBECCA MARIE MADRID
22 Deputy District Attorney
23 Sexually Violent Predator Unit

24 Attorney for Petitioner
25
26
27
28

GIL GARCETTI
District Attorney
of Los Angeles County
By: REBECCA MARIE MADRID
State Bar No. 149276
Deputy District Attorney
Sexually Violent Predator Unit
320 West Temple Street, Suite 740
Los Angeles, California 90012
Telephone: (213) 974-5927

Attorney for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

| | | | |
|------------------|---|---------------------------------|----------------|
| |) | Case Nos. | ZM001979 |
| |) | | A766947 |
| |) | | |
| IN THE MATTER OF |) | AFFIDAVIT IN SUPPORT OF AMENDED | |
| |) | PETITION FOR COMMITMENT AS A | |
| |) | SEXUALLY VIOLENT OFFENDER | |
| |) | PURSUANT TO WELF. & INST. CODE, | |
| |) | § 6250 ET SEQ. | |
| ELI TONY DELRAY, |) | DATE: | AUGUST 5, 1999 |
| CDC NO. D53484, |) | TIME: | 9:00 A.M. |
| |) | DEPT: | 95 |
| Respondent. |) | | |

I, Rebecca Marie Madrid, having been duly sworn, do hereby declare:
THAT I am a Deputy District Attorney for the County of Los Angeles;
THAT ELI TONY DELRAY has been convicted of, and received a determinate
sentence for, the following sexually violent offenses within the meaning of Welfare and
Institutions Code section 6600, subdivisions (b) and (e):

///

///

///

///

| <u>CASE NO.</u> | <u>CHARGE</u> | <u>DATE OF CONVICTION</u> | <u>DATE OF SENTENCE</u> |
|---------------------|---|---------------------------|-------------------------|
| CR 15641 [Ohio] | RC § 2907.02 [2 counts] (Rape) | 3/20/1975 | 4/08/1975 |
| CR 15641 [Ohio] | RC § 2907.05 [1 count] (Gross Sexual Imposition) | 3/20/1975 | 4/08/1975 |
| A766947 [Calif.] | Pen. Code, § 288, subd. (a) [3 counts] (Lewd Act upon a Child) | 1/29/1987 | 2/24/1987 |

THAT at least six months prior to that person's scheduled date for release from prison or termination of parole, the Department of Corrections referred the person for evaluation as a sexually violent predator.

THAT said person was screened by the Department of Corrections and the Board of Prison Terms; said screening determined that the person may be a sexually violent predator.

THAT said person was referred to the State Department of Mental Health for a full evaluation as required by law.

THAT the State Department of Mental Health evaluated the person and determined said person is a sexually violent predator, said evaluations having been prepared by professional evaluators designated by the Director of the State Department of Mental Health as required by law.

THAT said evaluations concur that the person qualifies for commitment under Welfare and Institutions Code section 6250 et seq. as a sexually violent predator in that said person suffers from a diagnosed mental disorder that predisposes the person to commit sexual acts in a degree constituting the person a menace to the health and safety of others.

THAT Affiant is informed and believes that said person is a sexually violent offender based upon the following criteria:


(1) That said person committed sex offenses within the meaning of subdivisions (a) and (b) of section 6600 of the Welfare and Institutions Code, and

(2) That said person suffers from a diagnosed mental disorder, and as a result of such a diagnosed mental disorder is predisposed to the commission of sexual acts to such a

1 degree that he constitutes a menace to the health and safety of others.

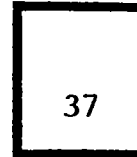
2 I declare under penalty of perjury that the foregoing is true and correct, except as
3 to those matters of information and belief.

4
5 Executed this 5th day of August, 1999, in Los Angeles, California.

6 
7 REBECCA MARIE MADRID
8 Deputy District Attorney
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE



EXHIBIT

Description of this exhibit: **LETTERS**

- A. **"Letter to Honorable Judge Harold Shabo"**
(Dated: 09-21-00)
- B. **"Letter to Attorney Nancy Ramseyer"**
(Dated: 09-21-00)

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

Eli Toney DelRay
A.S.H. AT # 047930-3
P.O. Box 7001 Unit 16
Atascadero, Calif. 93423-7001

September 21, 2000

Honorable Judge Harold Shabo
Department 95
1150 North San Fernando Road
Los Angeles, Calif. 90065

Dear Judge Shabo,

I trust this letter finds you in the very best of health, and aggressively handing out justice with a firm grip, keen eye, and your trademark compassion.

I dislike the idea that I need to write you this letter, but keeping in mind that my last request in court included the desire to file a Writ on issues that my Attorney and I, raised during pre-probable cause hearings and during the probable cause. You approved the acquisition of the transcripts that I thought I would need, and told my Attorney, Nancy Ramseyer, to get them for me.

Well, I, have not received the balance of the material that I asked for, prior to leaving the County Jail. She did provide me with some of the material, and stated that she would send me the other stuff as soon as it was completed.

Enclosed is a copy of a letter, dated May 28, 2000, I wrote to her while in the county, listing the things that I needed. She has supplied me with some of this material. I obtained the paperwork on CCR § 2600.1, by writing the Office of Administrative Law. The copy of the enclosed letter addressed to her itemizes the paperwork I still need. Having been back at the hospital since June 12, 2000, and haven't as of yet, heard anything from her, not even a return of my two phone calls; that got through, I'm concerned.

I know that she's a very good Attorney, but, it seems that where I'm involved, things are a lot less than they could be. I worry that this is a repeat performance of the out-of-sight, out-of-mind syndrome, that I went through back in 1996, when I first asked her to send me copies of the petition and copies of the Ohio code sections that we would need to challenge the petition. That request was at our first conference. I had to ask again after that and again at another conference. I finally received the paperwork after it was mailed on March 3, 1997, almost a full year later.

I write to you this information, only because I feel that I'm running out of time, and I have everything on hold waiting on these documents that I plan on using as exhibits. I hope that by informing you of this dilemma, I can avoid asking you to intervene on my behalf, because someone would be informed of my attempts to pursue my issues. I have also sent a copy of this letter to Nancy Ramseyer.

Thank you for your time, consideration, and possible intervention in this matter.

Respectfully Submitted,



Eli Toney DelRay

Eli Toney DelRay
A.S.H. AT # 047930-3
P.O. Box 7001 Unit 16
Atascadero, Calif. 93423-7001

September 21, 2000

Nancy Ramseyer
Deputy Public Defender
1150 North San Fernando Road
Los Angeles, Calif. 90065

Dear Nancy,

I trust this letter finds you in the best of health, and taking an aggressive step in life. I've attempted to call you on numerous occasions, but due to problems I place on this phone system, I've only reached your answering machine twice, of which I left you message's.

This time, because of the delay in your sending me the transcripts and other materials that I previously asked you for, I've decided that it's in my best interest to put it on paper, and have it supervised. I, because of this extended wait on the documents and transcripts that you said you would send to me once I got here, feel that because I'm out of sight, I'm also out of mind. You do remember that I only came back to this gulag to have access to the law library, in order to file a Writ on the denial of my motions, issues with my confinement from C.D.C., and determinations made in my Probable Cause Hearing. Well, bottom line is that I need the information I asked you for. I feel I preserved some of my argument against retrospective legislation at my arraignment, and only production of that transcript can prove that.

Here is a listing of documents that you said that you would send to me, once I got to the hospital, per our last telephone conversation while I was still at the County Jail:

1. June 26, 1996??, Transcript of Arraignment, Dept. 95
2. January 18, 2000, Transcript of augmented record on prior.
3. January 19, 2000, Transcript of motion, Sporich and Due Process.
4. May 23, 2000, Transcript of closing arguments on Dr. Kent Franks.
I have May 25, 2000, on Dr. Hy Malinek.
5. Calendar of my court appearances - 1996 to May 25, 2000.
6. Hospital Chart from May 23, 1996 - Jan. 21, 1998 AT # 045422-3.
7. D.M.H. Evaluator list showing panel that includes Dr. Kirkish and Dr. Singh.
8. Copy of original Writ pertaining to Gerald Rogers, by Attorney Pamela King.

Please note that I've also addressed this letter to Judge Shabo, so that a copy will go to my court file and he could intervene on my behalf if needed, to obtain these documents. I do apologize that I find this necessary at this time. Time is tolling, and I feel that I'm on hold. Please contact me at the soonest, if you have need of any further information.

Thank you for your time and consideration in this matter.

Sincerely,


Eli Toney DelRay

Eli Toney DelRay
Sup. Ct. No. ZM 001979

EXHIBIT COVER PAGE

38

EXHIBIT

Description of this exhibit: **LETTER TO J. GLATZHOFFER**

"Letter to Attorney J. (?) Glatzhofer"
(Dated: 07-07-2002)

(Names are actually Gene and Craig Glatzhofer)

Number of pages to this Exhibit: 4 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☒ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

ELI TONEY DEL-RAY
AT # 047930-3
ATASCADERO STATE HOSPITAL
PRISON ANNEX UNIT 29
P.O. BOX 70011
ATASCADERO, CALIFORNIA
93423-7001

JULY 07, 2002

JULY 07, 2002

MR. GENE GLATZHOFFER,
ATTORNEY AT LAW
2020 LINCOLN AVENUE
ANAHEIM, CALIF. 92801-5301

Dear Mr. Glatzhofer,

I know that your time is extremely valuable and important, so I respectfully ask that you read this letter completely, due to its importance to my current litigation.

I'm looking for the attorney who represented me on May 21, 1996, at a Board of Prison Terms probable cause hearing, regarding California's Sexually Violent Predators Act.

The only information on that attorney that I have is an initial and last name, J. Glatzhofer. Based on that, I researched the California's Lawyers Directory and wrote this letter in duplicate to you and the only other Mr. Glatzhofer listed.

Sir, it has been six long years of fighting this attempt to commit me to this state hospital where I'm currently confined. You may or may not recognize the name Eli Toney Del Ray, CDC # D-53484, but, if you could take the time to check your records, and/or files, to see if you may have represented me, it would be most appreciated.

If you happen to be the attorney who represented me at that Board of Prison Terms hearing, my problem could be solved with any information or copies of any documentation, transcripts or tapes that you may have from that hearing, so that I may be able to perfect my Habeas Petition. I was unable to obtain a tape of the hearing, due to transfer problems and belatedly discovering inaction on the part of my Superior Court appointed Public Defender.

Enclosed is a copy of the BPT's hearing determination. This is the only paperwork I've been able to obtain on the issues that you raised for me, and it's incomplete. Even though four (4) issues were raised, it only addresses three (3). My fourth issue was that the conviction they were using as a predicate, was from another state and that the S.V.P. act didn't include out-of-state convictions as predicate offenses. As you can see, this issue was not included in the written summary. I also took the liberty of transcribing the handwritten notes into typed text for easier reading.

I recall the Commissioner excusing us from the Boardroom in order to call his Supervisor on the issue of the indeterminate term and excusing us a second time on the out-of-state conviction issue.

If you have any records or can recall any of these facts, would you consider writing me a declaration as to what you may recall and/or include any hard copies of documents you may have pertaining to these issues.

They are necessary, to show that I raised these issues in a timely manner, and therefore preserved them for review. I've also raised them in Superior Court at my arraignment on this Petition for commitment. I have not been able to convince my attorney, (the third one so far) of the importance of these issues, especially in light of the subsequent amendments, which added both, out-of-state convictions and indeterminate terms.

My challenge by way of demurrer and my motion to dismiss, both based on these issues, were taken under advisement by the arraignment Court, due to a stay of all proceedings, issued by the Appellate Court while reviewing a class-action dismissal from this same Court, based on the Constitutionality of the Act. It was two years later when all stays of were lifted, after a finding by the Appellate Court, that the S.V.P. Act was Constitutional. By then, the amendments were in the law and well entrenched. It has been ruled that a failure to object or ask for extraordinary relief pretrial is a waiver of those issues.

I thank you most sincerely for your time and consideration in this matter, and further ask that if you were or were not my attorney, please at least write to inform me of that, so I will know that I need to renew my search in another direction.

If you have any questions or need further information, you can reach me at 805-468-3156, which is our patient incoming calls telephone. I cannot call you, as our outgoing phone is collect only.

Respectfully Yours,



Eli Toney Del-Ray
AT # 047930-3

ELI TONEY DEL-RAY
AT # 047930-3
ATASCADERO STATE HOSPITAL
PRISON ANNEX UNIT 29
P.O. BOX 70011
ATASCADERO, CALIFORNIA
93423-7001

JULY 07, 2002

MR. CRAIG GLATZHOFFER,
ATTORNEY AT LAW
7391 WARNER AVENUE #D
HUNTINGTON BEACH, CALIF. 92647-5407

Dear Mr. Glatzhofer,

I know that your time is extremely valuable and important, so I respectfully ask that you read this letter completely, due to its importance to my current litigation.

I'm looking for the attorney who represented me on May 21, 1996, at a Board of Prison Terms probable cause hearing, regarding California's Sexually Violent Predators Act.

The only information on that attorney that I have is an initial and last name, J. Glatzhofer. Based on that, I researched the California's Lawyers Directory and wrote this letter in duplicate to you and the only other Mr. Glatzhofer listed.

Sir, it has been six long years of fighting this attempt to commit me to this state hospital where I'm currently confined. You may or may not recognize the name Eli Toney Del Ray, CDC # D-53484, but, if you could take the time to check your records, and/or files, to see if you may have represented me, it would be most appreciated.

If you happen to be the attorney who represented me at that Board of Prison Terms hearing, my problem could be solved with any information or copies of any documentation, transcripts or tapes that you may have from that hearing, so that I may be able to perfect my Habeas Petition. I was unable to obtain a tape of the hearing, due to transfer problems and belatedly discovering inaction on the part of my Superior Court appointed Public Defender.

Enclosed is a copy of the BPT's hearing determination. This is the only paperwork I've been able to obtain on the issues that you raised for me, and it's incomplete. Even though four (4) issues were raised, it only addresses three (3). My fourth issue was that the conviction they were using as a predicate, was from another state and that the S.V.P. act didn't include out-of-state convictions as predicate offenses. As you can see, this issue was not included in the written summary. I also took the liberty of transcribing the handwritten notes into typed text for easier reading.

I recall the Commissioner excusing us from the Boardroom in order to call his Supervisor on the issue of the indeterminate term and excusing us a second time on the out-of-state conviction issue.

If you have any records or can recall any of these facts, would you consider writing me a declaration as to what you may recall and/or include any hard copies of documents you may have pertaining to these issues.

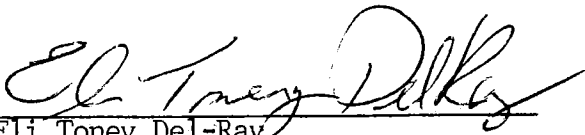
They are necessary, to show that I raised these issues in a timely manner, and therefore preserved them for review. I've also raised them in Superior Court at my arraignment on this Petition for commitment. I have not been able to convince my attorney, (the third one so far) of the importance of these issues, especially in light of the subsequent amendments, which added both, out-of-state convictions and indeterminate terms.

My challenge by way of demurrer and my motion to dismiss, both based on these issues, were taken under advisement by the arraignment Court, due to a stay of all proceedings, issued by the Appellate Court while reviewing a class-action dismissal from this same Court, based on the Constitutionality of the Act. It was two years later, when all stays were lifted, after a finding by the Appellate Court, that the S.V.P. Act was Constitutional. By then, the amendments were in the law and well entrenched. It has been ruled that a failure to object or ask for extraordinary relief pretrial is a waiver of those issues.

I thank you most sincerely for your time and consideration in this matter, and further ask that if you were or were not my attorney, please at least write to inform me of that, so I will know that I need to renew my search in another direction.

If you have any questions or need further information, you can reach me at 805-468-3156, which is our patient incoming calls telephone. I cannot call you, as our outgoing phone is collect only.

Respectfully Yours,



Eli Toney Del-Ray

AT # 047930-3

ATTACHMENTS

COVER SHEET

Eli Toney DelRay
Sup. Ct. No. ZM 001979

1987 Trial Transcript (Dated: 02-03-87)
16 pages
Numbered 1364 thru 1379

ATTACHMENT
"A"

1 LOS ANGELES, CALIFORNIA; TUESDAY, FEBRUARY 3, 1987 *

2 9:33 A.M.

3 DEPARTMENT NO. 113

HON. MICHAEL A. TYNAN, JUDGE

4
5 (APPEARANCES AS HERETOFORE NOTED.)

6
7 THE COURT: IN THE MATTER OF ELI TONY DEL RAY, THE
8 MATTER IS HERE FOR FURTHER ARGUMENT VIS-A-VIS THE FAILURE,
9 IF ANY, OF THE PEOPLE TO PROPERLY PLEAD AND PROVE THE
10 ALLEGATIONS THAT HE WAS PREVIOUSLY CONVICTED OF A FELONY
11 IN A SISTER STATE AND THAT FELONY WOULD BE A FELONY HAD IT
12 BEEN COMMITTED IN CALIFORNIA.

13 MR. DEL RAY IS PRESENT IN PRO PER.

14 MR. KOUMJIAN IS PRESENT.

15 MR. KOUMJIAN, I HAVE A COPY HERE THAT YOU
16 GAVE ME OF PAGES OF OHIO'S -- PAGES OF OHIO REVISED CODE
17 ANNOTED TITLE 29.

18 DO YOU HAVE A PAGE FOR ME?

19 MR. KOUMJIAN: YES. ACTUALLY, I'VE PHOTOCOPIED THE
20 MATERIAL AND I'VE ALSO GIVEN IT TO MR. DEL RAY IN THE
21 PACKAGE THAT BEGINS WITH CALIFORNIA EVIDENCE CODE SECTION
22 452, THE SECOND PAGE, AND CONTINUING PAGES THAT DEALS WITH
23 ALSO THE OHIO STATUTES WHICH HAVE BEEN PHOTOCOPIED
24 BEGINNING AT SECTION 2907.01 OF OHIO LAW.

25 THE COURT: OKAY. IN REVIEWING -- ARE YOU READY,
26 MR. DEL RAY? HAVE YOU GOT IT,
27
28

1 MR. KOUMJIAN: MR. DEL RAY'S COPY HAS THE LONGER
2 PAGES.

3 IN REVIEWING THE OHIO STATUTE THE DEFENDANT
4 WAS CONVICTED OF TWO DIFFERENT OFFENSES; TWO OF THOSE
5 COUNTS UNDER SECTION 2907.02, WHICH IS CALLED IN OHIO,
6 RAPE. THE OTHER ONE WAS UNDER 2907.03, WHICH IS IN OHIO,
7 CALLED GROSS SEXUAL IMPOSITION SO THAT MAY BE .05, GROSS
8 SEXUAL IMPOSITION.

9 THE CHARGE OF GROSS SEXUAL IMPOSITION, IN MY
10 OPINION, SO FAR MY REVIEW, DOES NOT CONTAIN ALL THE
11 ELEMENTS -- IT DOES NOT NECESSARILY INVOLVE A CONVICTION
12 OF A SERIOUS FELONY IN CALIFORNIA; HOWEVER, THE CHARGE OF
13 RAPE DOES.

14 IN OHIO, SECTION 2702, WHICH DEFINES RAPE --
15 THE COURT: 2907.02.

16 MR. KOUMJIAN: THAT'S CORRECT, YES, DEFINES RAPE
17 AND SAYS THAT RAPE CAN OCCUR WHEN THERE IS SEXUAL CONDUCT
18 UNDER THREE CIRCUMSTANCES: BETWEEN TWO PEOPLE WHO ARE NOT
19 MARRIED THE DEFENDANT USES FORCE; OR TWO, TO PREVENT
20 RESISTANCE IT SUBSTANTIALLY IMPAIRS THE OTHER PERSON'S
21 JUDGMENT AND CONTROL BY ADMINISTERING ANY DRUG OR
22 INTOXICANT; AND THREE, THAT THE PERSON IS LESS THAN
23 THIRTEEN YEARS OF AGE.

24 SEXUAL CONDUCT IS DEFINED IN 2907.01 OF THE
25 OHIO STATUTE TO INCLUDE VAGINAL INTERCOURSE, ANAL
26 INTERCOURSE AND FELLATIO AND CUNNILINGUS.

27 THE DEFENDANT, BY VIRTUE OF BEING CONVICTED
28 OF RAPE IN OHIO, ALTHOUGH IT IS APPARENT FROM THE

1 INFORMATION FROM THE MINUTES OF THE COURT, THAT THAT
2 INVOLVED A CHILD UNDER THE AGE OF THIRTEEN, WHICH WOULD BE
3 A 288, IF ONE TAKES A LIMITED READING OF THE SUPREME COURT
4 CASES RECENTLY, CALIFORNIA SUPREME COURT CASE OF ALFARO,
5 THE LEAST ADJUDICATED ELEMENTS OF HIS OFFENSE WOULD BE
6 THAT HE COMMITTED ONE OF THESE VIOLATIONS, WITHOUT
7 CONSIDERING WHETHER OR NOT THE INFORMATION CHARGED THAT
8 THE CHILD WAS UNDER THIRTEEN, SO --

9 THE COURT: WELL, THE INFORMATION -- THE PAPER FROM
0 OHIO DOES ALLEGE THAT THE CHILD WAS UNDER THIRTEEN.

1 MR. KOUMJIAN: RIGHT. I DON'T THINK THAT IS -- I'M
2 GOING TO PROCEED ON THE ASSUMPTION THAT UNDER CALIFORNIA
3 LAW YOU ARE NOT ALLOWED TO CONSIDER THE INFORMATION, WHICH
4 IS MY UNDERSTANDING OF THE ALFARO CASE.

5 THE COURT: I THINK THAT IS ERRONEOUS. I THINK WE
6 BETTER STICK WITH WHAT WE GOT.

7 MR. KOUMJIAN: OKAY. I AM DEALING WITH THAT.

8 THE COURT: THE PAPER FROM OHIO SAYS --

9 MR. KOUMJIAN: IF WE CONSIDER THAT AS BEING
0 ADMISSIBLE AND MAY BE CONSIDERED BY THE COURT, THEN MY
1 ARGUMENT IS ONLY STRONGER. I'M DEALING WITH IF THE COURT
2 DOESN'T CONSIDER THAT.

3 THE COURT: THAT'S THE ONLY THING I AM GOING TO
4 CONSIDER, BECAUSE I'M NOT GOING TO CONSIDER FORCE OR
5 THREAT OF FORCE OR DRUGS OR ANYTHING ELSE, SUB 1 AND 2 OF
6 29067.02(A) OF THE OHIO CODE.

7 SO THE ONLY THING THAT WAS PLED AND THE ONLY
8 THING THAT HAS BEEN ALLEGED TO THIS COURT IS

1 SUBDIVISION 3.

2 MR. KOUMJIAN: THE REASON I SAY THAT IS ALFARO,
3 WHICH IS DECEMBER -- CALIFORNIA SUPREME COURT CASE ADVANCE
4 SHEET 29, SAYS THAT THE INFORMATION CANNOT BE --
5 ALLEGATIONS IN THE INFORMATION ARE NOT TO BE CONSIDERED
6 FOR PURPOSES OF THE PRIOR.

7 IN THAT CASE IT INVOLVED AN ALLEGATION THAT
8 IT WAS BURGLARY OF A RESIDENCE. THE COURT SAID THAT IS
9 NOT NECESSARILY AN ADJUDICATED ELEMENT OF THE CASE

10 IN ANY EVENT --

11 THE COURT: HAVE YOU GIVEN ME ALFARO IN THIS PACKET
12 OF --

13 MR. KOUMJIAN: NO, I HAVEN'T.

14 THE COURT: WHAT IS THE CITE ON IT?

15 MR. KOUMJIAN: I'M NOT SURE. I KNOW IT IS IN THE
16 ADVANCE SHEET 29.

17 THE COURT: COULD YOU PULL OUT MY ADVANCE SHEET
18 '87.

19 MR. KOUMJIAN: '86.

20 THE COURT: '86, PLEASE.

21 GO AHEAD.

22 MR. KOUMJIAN: IN ANY EVENT, EVEN PROCEEDING UNDER
23 THE COURT'S INTERPRETATION, THE DEFENDANT THEN WAS
24 CONVICTED OF A 288 OF THE PENAL CODE, AT LEAST, OR OF
25 THE -- THE EQUIVALENT OF A 288 UNDER CALIFORNIA LAW.

26 THE COURT: PROBABLY SO.

27 MR. KOUMJIAN: THE QUESTION IS, THE ALLEGATION WAS
28 NOT PLED IN THE INFORMATION THAT THE PEOPLE FILED, THE

1 AMENDED INFORMATION CHARGING THE ALLEGATION.

2 THE DEFENDANT WAS APPRAISED (SIC) THAT HE WAS
3 CHARGED WITH A PRIOR SERIOUS FELONY AND HE WAS TOLD OF THE
4 CONVICTION IN OHIO AND HE WAS APPRAISED OF THE CONVICTION
5 IN OHIO THAT CONSTITUTED THE BASIS OF THAT.

6 THE INFORMATION CONTAINED LANGUAGE, WHICH I
7 THINK IS ACTUALLY GRATUITOUS, THAT SAID THAT THE CRIME IN
8 CALIFORNIA THAT THAT WAS THE EQUIVALENT OF WAS RAPE.

9 IN MY OPINION ACTUALLY THE CALIFORNIA -- THE
10 OHIO STATUTE IS A SERIOUS FELONY BECAUSE IT IS
11 NECESSARILY -- IF HE WAS CONVICTED OF THE OHIO STATUTE, HE
12 EITHER WAS CONVICTED OF RAPE OR SODOMY UNDER 286 OF THE
13 CALIFORNIA PENAL CODE.

14 THE COURT: WAIT, MR. KOUMJIAN. I THINK I GAVE YOU
15 A HINT --

16 MR. KOUMJIAN: ALL RIGHT.

17 THE COURT: -- THAT I'M NOT GOING TO CONSIDER THAT
18 BECAUSE IT IS NOT PLED IN OHIO AND IT IS OBVIOUSLY NOT
19 FACTUALLY CORRECT.

20 MR. KOUMJIAN: I AGREE.

21 THE COURT: SO LET'S JUST TALK ABOUT WHAT WE
22 BELIEVE THE DEFENDANT DID IN OHIO, AND THAT WAS ROUGHLY
23 THE SAME THING HE WAS CONVICTED OUT HERE IN CALIFORNIA OF.

24 MR. KOUMJIAN: ALL RIGHT.

25 THE COURT: THE QUESTION IN MY MIND IS WHETHER OR
26 NOT YOUR PLEADING PUTS HIM ON NOTICE OR MAYBE LEADS HIM
27 INTO A FALSE SENSE OF SECURITY THAT SINCE YOU HAVE MISPLED
28 WHAT HAPPENED IN OHIO, THAT HE COULD RELY ON THAT, SIT

1 BACK AND NOT SAY ANYTHING, AS HE DID, AND GET PROPERLY --
2 OR HAVE A PRIOR FOUND TO BE TRUE BECAUSE OF THE PLEADING,
3 AND IT IS THE PLEADING THAT HAS GOTTEN YOU VERY, VERY
4 CLOSE TO YOUR OWN PITARD.

5 GO AHEAD.

6 MR. KOUMJIAN: THANK YOU.

7 THE WAY THE COURT HAS STATED IT, IF THE
8 DEFENDANT SAYS THAT THE PLEADING -- THE ARGUMENT IS THAT
9 THE PLEADING ITSELF DOES NOT STATE AN OFFENSE, DOES NOT
10 CONSTITUTE A PRIOR CONVICTION, THEN THE DEFENDANT SHOULD
11 HAVE DEMURRED TO THE PLEADING AND IT IS NOT PROPER AT THE
12 CLOSE OF EVIDENCE THEN TO SAY, WELL, THE PLEADING DIDN'T
13 ALLEGE AN OFFENSE AGAINST ME.

14 THE EVIDENCE IN THIS CASE SHOWED THAT THE
15 DEFENDANT COMMITTED AN OFFENSE THAT CONSTITUTES A SERIOUS
16 FELONY IN CALIFORNIA, AND I THINK THAT FIRST THE PEOPLE
17 HAVE A RIGHT TO AMEND UNDER SECTION 1009 OF THE PENAL CODE
18 UNDER ANY STAGE OF THE PROCEEDINGS, AND THAT IS WHAT
19 SHOULD OCCUR IN THIS CASE.

20 1009 ALLOWS THE AMENDMENT OF THE ACCUSATORY
21 PLEADING AT ANY STAGE OF THE PROCEEDINGS UNLESS A
22 SUBSTANTIAL RIGHT OF THE DEFENDANT IS IMPAIRED BY THE
23 AMENDMENT.

24 AND THERE ARE CASES THAT -- WHERE, AFTER THE
25 CLOSE OF EVIDENCE, THE COURT ALLOWED AN AMENDMENT TO THE
26 PLEADING.

27 IN PEOPLE KOCH COUCH, WHICH IS AN EXAMPLE OF
28 THAT, 4 CAL.APP.3D 270, IN THAT CASE ACTUALLY THE

1 DEFENDANT WAS CONVICTED OF CONSPIRACY TO COMMIT GRAND
2 THEFT, AND THE APPELLATE COURT SAID IN FACT THAT WAS
3 PLEADED INCORRECTLY, THERE COULDN'T HAVE BEEN A CRIME OF
4 GRAND THEFT UNDER THOSE FACTS; HOWEVER, THERE WAS A CRIME
5 UNDER THOSE FACTS OF A MISDEMEANOR VIOLATION -- I FORGOT
6 THE EXACT TERMINOLOGY OF THAT -- AND THE COURT ALLOWED,
7 EVEN AT THE APPELLATE STAGE, FOR THE PLEADING TO BE
8 CHANGED TO SHOW AND ENTER A CONVICTION NOT OF CONSPIRACY
9 TO COMMIT GRAND THEFT, BUT OF CONSPIRACY TO COMMIT THE
10 OTHER OFFENSE.

1 AND THERE ARE OTHER CASES WHERE THE COURTS
2 HAVE ALLOWED THE PEOPLE TO AMEND EVEN DURING ARGUMENT.

3 THERE WAS A CASE WHERE THE PEOPLE WERE
4 ALLOWED TO EXTEND THE STATUTE OF LIMITATIONS, I BELIEVE
5 THAT IS PEOPLE VERSUS WITT 53 CAL.APP.3D 154 WHERE THE
6 PEOPLE AMENDED DURING ARGUMENT THE STATUTE OF LIMITATIONS.

7 AND ALL THESE CASES GO FOR THE PROPOSITION
8 THAT IF THE PEOPLE NEGLIGENTLY FILE THE INFORMATION, IF IT
9 IS CLEARLY WRONG, THE COURT IS NOT REM -- THE REMEDY IS
10 NOT TO DISMISS THAT AND HAVE A MISCARRIAGE OF JUSTICE
11 OCCUR UNLESS A SUBSTANTIAL RIGHT OF THE DEFENDANT IS
12 IMPAIRED.

3 IN THIS CASE THE DEFENDANT WAS PUT ON NOTICE
4 OF WHAT THE OHIO CONVICTION WAS AND THAT IT WAS ALLEGED TO
5 BE A SERIOUS FELONY.

6 THE ONLY WAY THAT I COULD SEE THAT
7 MR. DEL RAY HAS POSSIBLY BEEN IMPAIRED IS THAT WE CAN
8 ARGUE, WELL, HE WOULDN'T KNOW WHAT THE ELEMENTS OF A 288

1 ARE IN CALIFORNIA.

2 THE COURT: I THINK HE KNOWS THAT.

3 LET ME ASK YOU A QUESTION, MR. KOUMJIAN.
4 SUPPOSE YOU CHARGED HIM WITH A CRIME OF RAPE AND YOU TRIED
5 IT AND THE FACTS DEVELOP AT THE TRIAL YOU ESTABLISHED A
6 288 ONLY. YOU GOT UP, YOU WAIVED YOUR JURY ARGUMENT, YOU
7 SAT DOWN.

8 MR. DEL RAY GOT UP AND YOU THEN STOOD UP AND
9 SAID, "WAIT A MINUTE. WE WANT TO CHANGE THE GAME. IT IS
10 NOT RAPE, IT IS A 288."

11 DO YOU THINK THAT IS GOING TO FLY?

12 MR. KOUMJIAN: NO, AND THE REASON IT WOULDN'T FLY
13 IS THAT ALL OF THE DEFENDANT'S EXAMINATIONS AND
14 CROSS-EXAMINATIONS OF THE WITNESSES COULD HAVE BEEN
15 DIFFERENT IF HE HAD KNOWN HE WAS CHARGED WITH A 288, AS
16 OPPOSED TO BEING CHARGED WITH A RAPE.

17 IN THIS CASE -- AND ALSO BECAUSE THE
18 PRELIMINARY HEARING HAS TO ESTABLISH FOR A SUBSTANTIVE
19 OFFENSE THAT THE CRIME OCCURRED TO PUT THE DEFENDANT ON
20 NOTICE.

21 YOU ARE NOT REQUIRED TO ESTABLISH A PRIOR
22 CONVICTION AT THE PRELIMINARY HEARING.

23 IN THIS CASE WE'RE IN THE EVIDENCE STAGE OR
24 WE FINISH THE EVIDENCE STAGE OF THE PROCEEDINGS ON THE
25 PRIOR CONVICTION. THERE IS ABSOLUTELY NO WAY THAT THE
26 EVIDENCE WOULD BE ANY DIFFERENT OR THE DEFENDANT'S
27 EXAMINATIONS WOULD BE, WHEN THE ONLY THING THAT IS
28 DIFFERENT IS WHETHER OR NOT THAT CALIFORNIA -- THE OHIO

1 PRIOR, WHICH CALIFORNIA STATUTE IT FALLS UNDER AS BEING
2 THE EQUIVALENT OF FOR THE ELEMENTS OF A SERIOUS FELONY.

3 IT IS JUST PURELY A LEGAL ARGUMENT AND IT IS
4 PURELY A MATTER OF THE CORRECT LEGAL APPLICATION OF THAT
5 STATUTE TO CALIFORNIA.

6 I'VE YET TO HEAR ANY THEORY OF HOW THE
7 DEFENDANT'S RIGHTS WILL BE IMPAIRED AT THIS STAGE BY
8 CHANGING THE PLEADING TO A 288 OR TO A COMBINATION OF
9 DIFFERENT OFFENSES IN CALIFORNIA.

10 I ALSO DIRECT THE COURT TO SECTION 960 OF THE
11 PENAL CODE. SECTION 960 OF THE PENAL CODE DEALS WITH THE
12 SUFFICIENCY OF PLEADINGS AND IT MAKES ABSOLUTELY CLEAR
13 THAT:

14 "NO ACCUSATORY PLEADING IS
15 INSUFFICIENT, NOR CAN THE TRIAL,
16 JUDGMENT, OR OTHER PROCEEDING
17 THEREON BE AFFECTED BY REASON OF ANY
18 DEFECT OF IMPERFECTION IN MATTER OR
19 FORM WHICH DOES NOT PREJUDICE A
20 SUBSTANTIAL RIGHT OF THE DEFENDANT
21 UPON THE MERITS."

22 AND I THINK IN BOTH THIS AND SECTION 1009 IT
23 IS CLEAR THE LEGISLATURE DOES NOT WANT A PERSON WHO
24 DESERVES TO BE PUNISHED TO GET OFF BECAUSE OF A -- EVEN A
25 NEGLIGENT ACT BY THE PROSECUTOR.

1 AND I ADMIT THAT I DEFINITELY SHOULD HAVE
2 CAUGHT THIS. THERE IS NO DOUBT ABOUT IT. IF WE WERE IN A
3 MOCK TRIAL COMPETITION, I WOULD LOOSE, BUT HERE WE'RE
4 TALKING ABOUT THE RIGHTS OF THE PUBLIC, WHETHER OR NOT
5 THEY WOULD BE AFFECTED BY LETTING MR. DEL RAY WALK ON
6 SOMETHING THAT HE CLEARLY HAD NOTICE OF, THAT HE CLEARLY
7 WILL NOT BE PREJUDICED BY CHANGING AT THIS TIME.

8 THERE IS NO RIGHT OF MR. DEL RAY THAT IS
9 BEING AFFECTED BY THE COURT READING THE MATERIAL IN
10 LIBERAL FASHION WHICH IS REQUIRED BY SECTION 960, AS
11 OPPOSED TO A VERY TECHNICAL READING SAYING, WELL, THE
12 SECTION UNDER CALIFORNIA LAW CHARGED IS NOT A CORRECT
13 PLEADING.

14 THE COURT: BUT THAT IS THE ESSENCE OF CHARGING A
15 GUY WITH AN OUT-OF-STATE PRIOR, THAT IT HAD TO BE A FELONY
16 IN CALIFORNIA.

17 MR. KOUMJIAN: THAT'S WHAT WE'VE PROVED. WE'VE
18 PROVED THAT IN THE EVIDENCE. ABSOLUTELY WE HAVE TO SHOW
19 IT AND WE'VE SHOWED IT IN THE EVIDENCE THAT IT IS A FELONY
20 IN CALIFORNIA.

21 THE COURT: MR. DEL RAY?

22 THE DEFENDANT: YOUR HONOR, THE PEOPLE HAVE TALKED
23 ABOUT THE AMENDMENT TO THE INFORMATION UNDER 1009.
24 ACCORDING TO THE INFORMATION THAT THEY FILED, THEY ALLEGE
25 261.

26 ACCORDING TO 1009, IT SAYS:

27 "AN INDICTMENT OR ACCUSATION CANNOT
28 BE AMENDED AS TO CHANGE THE OFFENSE

1 CHARGED, NOR AN INFORMATION SO AS TO
2 CHARGE AN OFFENSE NOT SHOWN BY THE
3 EVIDENCE."

4 OKAY.

5 THAT GOES ON TO STATE ABOUT THE PRELIMINARY
6 HEARING. I BELIEVE I HAD ASKED FOR ONE PERTAINING TO THIS
7 AND THE PEOPLE COULD HAVE CAUGHT THEIR MISTAKES AT THAT
8 TIME.

9 THE PROBLEM WITH THE INFORMATION FROM OHIO IS
10 THAT THOUGH I WAS CONVICTED OF A RAPE --

11 THE COURT: OF A CHILD UNDER THIRTEEN.

12 THE DEFENDANT: RIGHT. OKAY.

13 HERE UNDER THE CALIFORNIA STATUTE -- MAY I
14 HAVE A PENAL CODE, PLEASE?

15 THE COURT: TIM, WOULD YOU GIVE MR. DEL RAY YOUR
16 PENAL CODE. OH, MR. KOUMJIAN HAS GOT IT.

17 THE DEFENDANT: THANK YOU.

18
19 (BRIEF PAUSE.)

20
21 THE DEFENDANT: IF MAY HAVE A MINUTE, YOUR HONOR.

22 THE COURT: SURE.

23 MR. KOUMJIAN: I WOULD ALSO LIKE TO DIRECT THE
24 COURT TO THE CASE THAT IS INCLUDED IN THE MATERIAL I GAVE
25 THE COURT, PEOPLE VERSUS SMOOT, WHEREIN IN THAT CASE A
26 PRIOR CONVICTION OF 647(A) WAS INCORRECTLY PLEADED. IT
27 DID NOT INCLUDE THE FACT THAT THE VIOLATION WAS OF
28 SUBDIVISION 1.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
2165
2166
2167
2168
2169
2170
2171
2172
2173
2174
2175
2176
2177
2178
2179
2180
2181
2182
2183
2184
2185
2186
2187
2188
2189
2190
2191
2192
2193
2194
2195
2196
2197
2198
2199
2200
2201
2202
2203
2204
2205
2206
2207
2208
2209
2210
2211
2212
2213
2214
2215
2216
2217
2218
2219
2220
2221
2222
2223
2224
2225
2226
222

1 AMENDMENT TO THE INFORMATION, BEING THREE PAGES LONG, WAS
2 OVERLY EXCESSIVE IN ITS WORDING. I THINK THAT THAT WOULD
3 SHOW RIGHT THERE IT WAS A GROUNDS FOR DEMURRER, ALTHOUGH I
4 DID NOT USE THE PROPER COURT TERM. IT WAS STILL A
5 CHALLENGE.

6 THE COURT: MR. DEL RAY, YOU SAID SOMETHING
7 YESTERDAY ABOUT DISCUSSING THIS AFTER YOUR LAST TRIAL.

8 THE DEFENDANT: YES, I DID, YOUR HONOR.

9 THE COURT: WHAT WAS THE NATURE OF THAT DISCUSSION?

10 THE DEFENDANT: WELL, I -- IT WAS BEFORE THE LAST
11 TRIAL AT A 402 EVIDENTIARY HEARING WHERE I DISCUSSED
12 THE -- THE NATURE OF THE CHARGE ITSELF, THE DIFFERENT
13 SECTIONS I WAS CHARGED UNDER AND THE INSUFFICIENCY.

14 THE COURT: ARE WE TALKING ABOUT THE PRIOR
15 ALLEGATIONS NOW?

16 THE DEFENDANT: YES.

17 THE COURT: ALL RIGHT.

18 THE DEFENDANT: AND I STATED THAT I DIDN'T THINK
19 THAT IT WAS POSSIBLE TO CHARGE ME UNDER SO MANY DIFFERENT
20 STATUTES.

21 AT THE TIME I HAD AID BY COUNSEL, AND HE
22 DIDN'T SEE FIT TO CHALLENGE IT UNDER A DEMURRER OR
23 ANYTHING LIKE THIS HERE.

24 AS FAR AS MY UNDERSTANDING OF THE DEMURRERS
25 WENT, I ONLY THOUGHT THE DEMURRERS WAS TO THE INFORMATION
26 CHARGING THE PRESENT OFFENSE. I WAS NOT AWARE THAT YOU
27 CAN CHALLENGE A PRIOR ALSO UNDER DEMURRER.

1 BUT I TALKED ABOUT THE CONSTITUTIONALITY OF
2 THE PRIOR. I STATED THAT BECAUSE -- IF THE PRIOR WAS
3 PROVEN, THAT THE DEFENDANT, AS CLAIMED THERE, WAS ON A
4 PAROLE, AND THAT HE WOULD BE PUNISHABLE AS A VIOLATOR.

5 AND IN OHIO, UNLIKE HERE, I DISCOVERED THAT A
6 PAROLE VIOLATION CAN GET ANYWHERE FROM ONE TO FIVE YEARS
7 JUST ON THE VIOLATION, AND BECAUSE IT IS A STATE THAT
8 SENTENCES INDETERMINATELY, AFTER THE VIOLATION TIME IS
9 COMPLETED, THE PERSON COULD ALSO GET TIME ON HIS
10 UNFINISHED SENTENCE ON THAT SAME OFFENSE.

11 AND ACCORDING TO MY RESEARCH, THE DEFENDANT
12 WAS SENTENCED TO A MAX OF 55 YEARS AND HIS MAX DATE WOULD
13 BE UP IN 2443 OR 2034 OR SOMETHING LIKE THAT.

14 GOING BACK TO THE ARGUMENT OF THE PEOPLE IN
15 THEIR ALLEGEMENT (SIC), I DON'T BELIEVE THAT THEY CAN
16 AMEND THE INFORMATION AT THIS TIME BECAUSE I BELIEVE THE
17 AMENDMENTS HAVE TO BE DONE PRIOR TO TRIAL OR DURING TRIAL.

18 AS THE TRIAL OF THE DEFENDANT IS COMPLETE,
19 AND THAT THIS IS JUST THE ARGUMENTS ON THE AMENDMENT WHICH
20 WAS ALLEGED IN OCTOBER OF '85, THE PEOPLE HAD SUFFICIENT
21 TIME TO REVIEW THEIR CASE, AS THIS WAS A PART OF THEIR
22 CASE.

23 I WAS READING SOME OF THE CASES IN THE
24 LIBRARY, THOUGH, ALTHOUGH WE'RE NOT THAT WELL-EQUIPPED,
25 AND I CAME UP WITH A CASE OF PEOPLE VERSUS HOUSTON, 24
26 CAL.APP.2D 170 THAT STATES THAT THIS DEFENDANT WAS TRIED
27 ON HIS PRIOR CONVICTION FOR HABITUAL CRIMINAL, AND IT WAS
28 REVERSED FOR THE SIMPLE FACT THAT IT WAS AMENDED AFTER THE

1 TRIAL.

2 AND FOR THE PEOPLE --

3 THE COURT: WHAT IS THE CITE? 24 CAL.APP.3D?

4 THE DEFENDANT: YES, YOUR HONOR.

5 THE COURT: WHAT PAGE?

6 THE DEFENDANT: PAGE 170.

7 THE COURT: HANG ON A MINUTE.

8
9 (BRIEF PAUSE.)

10
11 THE COURT: NO, I DON'T THINK THAT IS APPOSITE,
12 MR. DEL RAY, THE HOUSTON CASE.

13 THE DEFENDANT: OKAY.

14 THE COURT: BUT I AM CONCERNED ABOUT SEVERAL
15 THINGS. MR. KOUMJIAN HAS ADMITTED THAT HE WAS NOT ON TOP
16 OF THIS. WE'RE TALKING CHANGING OF TWO NUMBERS, 261 TO
17 288.

18 I'M ALSO CONCERNED ABOUT THE FACT THAT YOU
19 WERE CONVICTED OF A SERIOUS FELONY BACK IN OHIO. IT
20 CERTAINLY RELATES TO THE KIND OF CASE YOU WERE CONVICTED
21 ON OUT HERE.

22 MR. KOUMJIAN -- JUST A MINUTE. WHEN I'M
23 TALKING, YOU KEEP QUIET.

24 MR. KOUMJIAN, I AM VERY UNHAPPY ABOUT THIS,
25 BUT I THINK -- I THINK DUE PROCESS REQUIRES ME TO FIND
26 THAT THE PLEADING, IN A TECHNICAL -- IN A TECHNICAL AREA
27 LIKE THIS, IS CRITICAL.
28

1 THIS IS AN ERROR THAT SHOULD HAVE BEEN CAUGHT
2 AT THE FIRST TRIAL. THIS IS AN ERROR THAT SHOULD HAVE
3 BEEN CAUGHT BEFORE THIS CASE STARTED AND IT CERTAINLY
4 SHOULD HAVE BEEN CAUGHT BETWEEN THE TIME THAT THE JURY
5 WENT OUT AND THE TIME THE JURY CAME BACK. IT WAS NOT.

6 I HAVE TO FIND, I THINK, THAT THE ALLEGATIONS
7 AS TO HIS PRIOR, THERE IS JUST A COMPLETE FAILURE OF PROOF
8 IN THE PEOPLE'S CASE, AND I'M GOING TO HAVE TO FIND THEM
9 NOT TRUE, ALL OF THEM.

10 I'M SORRY, I REALLY AM.

11 MR. KOUMJIAN: DOES THE COURT WISH NO FURTHER
12 ARGUMENT ON THAT?

13 THE COURT: NO. THIS MATTER WILL BE SET THREE
14 WEEKS HENCE FOR PROBATION AND SENTENCE TO THE 24TH OF
15 FEBRUARY, 1987.

16 THE DEFENDANT: 24TH OF FEBRUARY, YOUR HONOR?

17 THE COURT: YES. THE PROBATION OFFICER SHALL
18 PREPARE A REPORT PURSUANT TO THIS ORDER.

19 THE DEFENDANT: YOUR HONOR, MOTION FOR A COMPLETE
20 TRANSCRIPT OF THE TRIAL PROCEEDINGS?

21 THE COURT: WHAT FOR?

22 THE DEFENDANT: WELL, JUST IN CASE I DECIDE TO TAKE
23 UP AN APPEAL.

24 THE COURT: YOU TAKE UP AN APPEAL AND YOU ASK THE
25 APPELLATE COURT FOR A COMPLETE TRANSCRIPT.

26 (AT 10:00 A.M. AN ADJOURNMENT WAS
27 TAKEN UNTIL, TUESDAY, FEBRUARY 24,
28 1987, 9:00 A.M.)

Eli Toney DelRay
Sup. Ct. No. ZM 001979

Ohio Revised Code § 2907.02
"Rape"
(From 1974)
1 page

ATTACHMENT
"B"

amendments do not require a prior adversary judicial determination of the fact of obscenity: *Moody v. Thrush Corp.*, 62 OO(2d) 115, 93 O Misc 84, 291 NE(2d) 922 (CP 1972).

SEXUAL ASSAULTS

§ 2907.02 Rape.

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

(1) The offender purposely compels the other person to submit by force or threat of force.

(2) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug or intoxicant to the other person, surreptitiously or by force, threat of force, or deception.

(3) The other person is less than thirteen years of age, whether or not the offender knows the age of such person.

(B) Whoever violates this section is guilty of rape, a felony of the first degree. If the offender under division (A) (3) of this section purposely compels the victim to submit by force or threat of force, whoever violates division (A) (3) of this section shall be imprisoned for life.

HISTORY: 134 v H 511, EF 1-1-74.

Not analogous to former RC § 2907.02 (131 v 673), repealed 134 v H 511, § 2, EF 1-1-74.

The effective date of H 511 is set by section 4 of the act.

Committee Comment

This section includes the traditional concept of rape as sexual intercourse with a female by force, but expands upon the offense in four important respects.

First, the acts contemplated include anal intercourse, cunnilingus, and fellatio in addition to vaginal intercourse, because any of such acts can result in serious physical or psychic harm to the victim when committed under circumstances amounting to rape.

Second, the section does away with distinctions of sex between offenders and victims, for the reason that homosexual and lesbian assaults can be as dangerous to victims as heterosexual assaults.

Third, the section explicitly provides for rape by purposely drugging the victim or rendering the victim intoxicated. In this context, the section does not include the situation where a person plies his intended partner with drink or drugs in the hope that lowered inhibitions might lead to a liaison, since when the alcohol or drugs are voluntarily taken in the absence of force or deception, the consent of the "victim" can fairly be inferred.

Fourth, the section designates as rape sexual conduct with a pre-puberty victim, regardless of whether force or drugs are used, and regardless of whether the offender has actual knowledge of the victim's age.

cible rape of a victim under age 13 carries a penalty of life imprisonment.

Research Aids

46 OJur2d: Rape §§ 1 et seq.

65 AmJur2d: Rape §§ 1 et seq.

ALR

Admissibility, in prosecution for assault or similar offense involving physical violence, of extent or effect of victim's injuries. 87 ALR2d 926.

Admissibility, in prosecution for sexual offense, of evidence of other similar offenses. 77 ALR2d 841.

Admissibility of prosecution evidence on issue of consent, that rape victim was virgin, absent defense attack on her chastity. 35 ALR3d 1452.

Applicability of rape statute covering children of a specified age, with respect to a child who has passed the anniversary date of such age. 73 ALR 2d 874.

Cautionary instructions as to evidence of other similar offense in rape case. 77 ALR2d 906.

Criminal responsibility of husband for rape, or assault to commit rape, on wife. 84 ALR2d 1017.

Entrapment to commit sexual offense. 52 ALR2d 1194.

Impeachment or cross-examination of prosecuting witness in sexual offense trial by showing that similar charges were made against other persons. 75 ALR2d 508.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape. 23 ALR3d 1851.

Intercourse accomplished under pretext of medical treatment. 70 ALR2d 824.

Mistake or lack of information as to victim's age as defense to statutory rape. 8 ALR3d 1100.

Rape by fraud or impersonation. 91 ALR2d 591.

Rape or similar offense based on intercourse with woman who was allegedly mentally deficient. 31 ALR3d 1227.

CASE NOTES AND OAC**INDEX**

Abduction for immoral purposes, 19
 Attempted rape, 6, 7
 Consent, or lack of, 5, 20, 21, 23, 25
 Evidence, competency, sufficiency, 1, 2, 11, 14, 20, 26, 27
 Declaration by victim, 13, 15, 17
 Exclusion of public from courtroom, 12
 Former jeopardy, 10
 Impeaching prosecuting witness, 18, 18
 Incest, 9
 Indictment, sufficiency, 4
 Insanity, finding, 3
 Instructions, 7, 8
 Intent to use force, 7, 20, 20, 21
 Intoxication, 27
 Lesser included offenses, 9
 Statutory rape, 1, 22
 Unconscious victim, 25

Eli Toney DelRay
Sup. Ct. No. ZM 001979

Ohio Revised Code § 2907.05
"Gross Sexual Imposition"
(From 1974)
1 page

ATTACHMENT
"C"

decent liberties. . . or otherwise in any manner" molesting any such child, is not void for indefiniteness or uncertainty. *Columbus v. Cook*, 5 OApp (2d) 243, 54 OO(2d) 388, 214 NE(2d) 837.

12. An indictment of an accused over eighteen years of age, under CC § 12414 (RC § 2905.03), for carnally knowing and abusing a female person under sixteen years of age, with her consent, has the effect also of charging the accused with an attempt to rape a female person under sixteen years of age, with her consent, as such offense is defined in this section: *State v. Ross*, 96 App 157, 54 OO 230, 121 NE(2d) 289.

13. The intent with which an act is done is immaterial, where it is made an offense expressly prohibited by statute, and in a prosecution of one over eighteen years of age for having carnal knowledge of a girl under sixteen with consent, it is not necessary that criminal intent be either averred or proved: *Zent v. State*, 8 App 473, 21 CC(NS) 475, 25 CD 219.

14. A sixteen year old boy having carnal knowledge of a female under sixteen years of age cannot be held delinquent for violating [former] RC § 2905.03, since the statute specifically identifies the class of persons who are criminally liable for statutory rape as being eighteen years of age or over: *In re J. P.*, 61 OO(2d) 24, 32 O Misc 5, 287 NE(2d) 926 CP (1972).

15. Where a man over eighteen years of age has sexual intercourse with his daughter or sister under sixteen years of age, with her consent, he may be prosecuted and punished under provisions of this section, notwithstanding the fact that he is also guilty of incest: 1943 OAC p. 6557.

§ 2907.05 Gross sexual imposition.

(A) No person shall have sexual contact with another, not the spouse of the offender, when any of the following apply:

(1) The offender purposely compels the other person to submit by force or threat of force.

(2) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug or intoxicant to the other person, surreptitiously or by force, threat of force, or deception.

(3) The other person is less than thirteen years of age, whether or not the offender knows the age of such person.

(B) Whoever violates this section is guilty of gross sexual imposition. Violation of division (A) (1) or (2) of this section is a felony of the fourth degree. Violation of division (A) (3) of this section is a felony of the third degree.

HISTORY: 134 v H 511, EF 1-1-74.

Not analogous in former RC § 2907.05 (113 v 541), repealed 134 v H 511, § 2, EF 1-1-74.

The effective date of H 511 is set by section 4 of the act.

Committee Comment

This section defines an offense analogous to rape, though less serious. Its elements are identical to those of rape, except that the type of sexual activity involved is sexual contact, rather than sexual conduct. See section 2907.02

Gross sexual imposition is a felony of the fourth de-

gree when the sexual contact is committed by force or threat or with the use of drugs or intoxicants. When the victim of the offense is under age 13, regardless of the means used to commit the offense, gross sexual imposition is a felony of the third degree

Research Aids

6 AmJur2d: Assault and Battery § 55

ALR

Applicability of statutes relating to offenses against children of specified age with respect to child who has passed the anniversary date of such age. 73 ALR2d 874

Assault with intent to commit unnatural sex act upon minor as affected by latter's consent. 65 ALR2d 748.

Impeachment or cross-examination of prosecuting witness in sexual offense trial by showing that similar charges were made against other persons. 75 ALR2d 508.

Mens rea or guilty intent as necessary element of offense of contributing to the delinquency or dependency of minor. 91 ALR3d 848.

§ 2907.06 Sexual imposition.

(A) No person shall have sexual contact with another, not the spouse of the offender, when any of the following apply:

(1) The offender knows that the sexual contact is offensive to the other person, or is reckless in that regard.

(2) The offender knows that the other person's ability to appraise the nature of or control the offender's conduct is substantially impaired.

(3) The offender knows that the other person submits because of being unaware of the sexual contact.

(4) The other person is over twelve but not over fifteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than the other person.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree.

HISTORY: 134 v H 511, EF 1-1-74.

Not analogous to former RC § 2907.06 (113 v 541), repealed 134 v H 511, § 2, EF 1-1-74.

The effective date of H 511 is set by section 4 of the act.

Committee Comment

This section defines an offense analogous to certain types of sexual battery and corruption of a minor, except that it involves sexual contact rather than sexual conduct.

The offense includes a sexual touching when the offender knows or has reasonable cause to believe the touching is offensive in this regard. If the person engaging in sexual contact has no reasonable grounds

Eli Toney DelRay
Sup. Ct. No. ZM 001979

California Penal Code Title 9 Chapter 1
Penal Code Section(s) 261 thru 290
(From 1974)
7 pages

ATTACHMENT
"D"

Title 9

RAPE

§ 261

Sec.

- 266h. Pimping; punishment.
 266i. Pandering; punishment.
 267. Abduction, female under 18 for purpose of prostitution; punishment.
 268. Seduction under promise of marriage; punishment.
 269. Seduction under promise of marriage; marriage as bar to prosecution; exception.
 269a. Cohabitation and adultery; punishment.
 269b. Adultery; each party married to another; evidence.

Cross References

Advertising respecting certain sex matters as offense, see Business and Professions Code § 600.

§ 261. Rape defined

Rape is an act of sexual intercourse, accomplished with a female not the wife of the perpetrator, under either of the following circumstances:

1. Where she is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent;

2. Where she resists, but her resistance is overcome by force or violence;

3. Where she is prevented from resisting by threats of great and immediate bodily harm, accompanied by apparent power of execution, or by any intoxicating narcotic, or anaesthetic substance, administered by or with the privity of the accused;

4. Where she is at the time unconscious of the nature of the act, and this is known to the accused;

5. Where she submits under the belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief.

(Enacted 1872. Amended by Stats.1889, c. 191, p. 223, § 1; Stats. 1897, c. 139, p. 201, § 1; Stats.1913, c. 122, p. 212, § 1; Stats.1970, c. 1301, p. 2405, § 1.)

Cross References

Administering stupefying drugs to assist in commission of felony, see § 222.

Assault with intent to commit rape, see § 220.

Contributing to delinquency of minors, see § 272.

Conviction as ground for revocation of

County teaching certificate, see Education Code § 13217.

Teaching credential, see Education Code § 13206.

Fingerprints and descriptions of violations of subds. (3), (4), daily report to bureau of identification and investigation, see § 11112.

Punishment for rape, see § 264.

Registration of sex offenders, see § 290.

School certificated employee, compulsory leave of absence on charge of violating this section, see Education Code § 13409.

School classified employee, suspension on charge of violating this section, see § 13742.

Sex offense as including violation of this section, see Education Code § 12912.

Soliciting commission of rape by another, punishment for, see § 653f.

Sufficiency of penetration, see § 263.

§ 261.5 CRIMES AGAINST THE PERSON

Pt. 1

§ 261.5 Unlawful sexual intercourse with female under age 18

Unlawful sexual intercourse is an act of sexual intercourse accomplished with a female not the wife of the perpetrator, where the female is under the age of 18 years.

(Added by Stats.1970, c. 1301, p. 2406, § 2.)

Cross References

Administering stupefying drugs to assist in commission of felony, see § 222.
 Assault with intent to commit rape, see § 220.
 Certificated employee of school district, compulsory leave of absence on charge of commission of sex offense, see Education Code § 13409.
 Contributing to delinquency of minor, see § 272.
 Conviction as ground for revocation of,
 County teaching certificate, see Education Code § 13217.
 Teaching credential, see Education Code § 13206.
 Punishment for rape, see § 264.
 Registration of sex offenders, see § 290.
 Soliciting commission of rape by another, punishment, see § 653f.
 Sufficiency of penetration, see § 263.

§ 262. Rape; defendant under 14; proof of physical ability

WHEN PHYSICAL ABILITY MUST BE PROVED. No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

(Enacted 1872.)

Cross References

Capacity of infants under age of fourteen to commit crimes, see § 26.
 Contributing to delinquency of minors, see § 272.
 Rape defined, see § 261.
 Reasonable doubt, see §§ 1096, 1097; Evidence Code § 501.
 Instruction on, see § 1096a.
 Sufficiency of penetration, see § 263.

§ 263. Rape; essentials; sufficiency of penetration

PENETRATION SUFFICIENT. The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

(Enacted 1872.)

Cross References

Probation, denial to defendant convicted of rape with force or violence, see § 1203.
 Reasonable doubt, establishing guilt beyond, see §§ 1096, 1097; Evidence Code § 501.
 Soliciting commission of rape by force and violence, see § 653f.

§ 264. Rape; unlawful sexual intercourse; recommendation of jury; discretion of court

Rape, as defined in Section 261, is punishable by imprisonment in the state prison for not less than three years. Unlawful sexual intercourse, as defined in Section 261.5, is punishable either by imprisonment in the county jail for not more than one year or in the state prison for not more than 50 years, and in such case the jury shall recommend by their verdict whether the punishment shall be

Title

by in
that
261.5
eithe
year

case
261, a
inflic
rape,
if fou
by th
defen
to life

(Enac
1923,
1967,

Convict
§ 13
Convict
Indeter
Life im
Punish
Steriliza

§ 26

T
which
by for
rape,
such f
found
by the
fendar
to life.
(Adde

Convicti
§ 13
Convicti
Persons

§ 265

AE
lawfull
to mari

Title 9

ABDUCTION OF WOMEN, ETC.

§ 265

by imprisonment in the county jail or in the state prison; provided, that when the defendant pleads guilty to an offense under Section 261.5 the punishment shall be in the discretion of the trial court, either by imprisonment in the county jail for not more than one year or in the state prison for not more than 50 years.

The preceding provisions of this section notwithstanding, in any case in which the defendant committed rape as defined in Section 261, and in the course of commission of the rape, with the intent to inflict such injury, inflicted great bodily injury on the victim of the rape, such fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant, defendant shall suffer confinement in the state prison from 15 years to life.

(Enacted 1872. Amended by Stats.1913, c. 123, p. 213, § 1; Stats. 1923, c. 130, p. 271, § 1; Stats.1952, 1st Ex.Sess., c. 23, § 1; Stats. 1967, c. 151, p. 1217, § 1; Stats.1970, c. 1301, p. 2406, § 3.)

Cross References

Conviction as ground for revocation of county teaching certificate, see Education Code § 13217.

Conviction as ground for revocation of teaching credential, see Education Code § 13206.

Indeterminate sentences, see §§ 1168, 1168a, 3020.

Life imprisonment where no maximum term prescribed, see § 671.

Punishments, how determined, see § 13.

Sterilization after being adjudged guilty of carnal abuse of female under 10, see § 645.

§ 264.1 Rape; acting in concert by force or violence; punishment

The provisions of Section 264 notwithstanding, in any case in which defendant, voluntarily acting in concert with another person, by force or violence and against the will of the victim, committed the rape, either personally or by aiding and abetting such other person, such fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant, defendant shall suffer confinement in the state prison from five years to life.

(Added by Stats.1967, c. 1551, p. 3722, § 1.)

Cross References

Conviction as ground for revocation of county teaching certificate, see Education Code § 13217.

Conviction as ground for revocation of teaching credential, see Education Code § 13206.

Persons aiding and abetting as principals, see § 31.

§ 265. Abduction for marriage or defilement; punishment

ABDUCTION OF WOMEN. Every person who takes any woman unlawfully, against her will, and by force, menace, or duress, compels her to marry him, or to marry any other person, or to be defiled, is punish-

§ 286. Sodomy; punishment

Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than one year.

(Enacted 1872. Amended by Stats.1921, c. 90, p. 87, § 1; Stats.1949, 1st Ex.Sess., c. 15, p. 29, § 1; Stats.1952, 1st Ex.Sess., c. 23, p. 380, § 2.)

Cross References

Assault with intent to commit sodomy, see § 220.

Conviction as ground for revocation of county teaching certificate, see Education Code § 13217.

Conviction as ground for revocation of teaching credential, see Education Code § 13206.

Felony, defined, see § 17.

Punishment, life imprisonment where minimum term prescribed and no maximum, see § 671.

Registration of sex offenders, see § 290.

Sex offense as including violation of this section, see Education Code § 12912.

Violation as sex offense within Education Code, see Education Code § 12912.

§ 286.1 Sodomy; acting in concert by force or violence; punishment

The provisions of Section 286 notwithstanding, in any case in which defendant, voluntarily acting in concert with another person, by force or violence and against the will of the victim committed sodomy upon a human being, either personally or by aiding and abetting such other person, such fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant, defendant shall suffer confinement in the state prison from five years to life.

(Added by Stats.1967, c. 1551, p. 3722, § 2.)

Cross References

Conviction as ground for revocation of county teaching certificate, see Education Code § 13217.

Conviction as ground for revocation of teaching credential, see Education Code § 13206.

§ 287. Sodomy; sufficiency of penetration

PENETRATION SUFFICIENT TO COMPLETE THE CRIME. Any sexual penetration, however slight, is sufficient to complete the crime against nature.

(Enacted 1872.)

Cross References

Rape, sufficiency of penetration, see § 263.

§ 288. Lewd or lascivious acts upon the body of a child under 14; intent; punishment

Any person who shall wilfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes provided for in part one of this code upon or with the body, or any part or member thereof, of a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or

§ 288**CRIMES AGAINST THE PERSON**

Pt. 1

sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the State prison for a term of from one year to life.

(Added by Stats.1901, c. 204, p. 630, § 1. Amended by Stats.1933, c. 405, p. 1028, § 1; Stats.1937, c. 545, p. 1562, § 1.)

Cross References

Accomplice, defined, see § 1111.

Contributing to delinquency of minors, see § 272.

Conviction as ground for revocation of county teaching certificate, see Education Code § 13217.

Conviction as ground for revocation of teaching credential, see Education Code § 13206.

Degrading practices in presence of children, see § 273g.

Felony, defined, see § 17.

Persons capable of committing crime, see § 26.

Registration of sex offenders, see § 290.

Sentence to imprisonment in state prison, see § 1168.

Sex offense as including violation of this section, see Education Code § 12912.

Sexual psychopaths, see Welfare and Institutions Code § 6300 et seq.

Term of imprisonment, determining, see § 3020.

Violation as sex offense within Education Code, see Education Code § 12912.

Willfully defined, see § 7(1).

§ 288.1 Lewd or lascivious acts; psychiatric report as prerequisite to suspended sentence

Any person convicted of committing any lewd or lascivious act including any of the acts constituting other crimes provided for in Part 1 of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years shall not have his sentence suspended until the court obtains a report from a reputable psychiatrist as to the mental condition of such person.

(Added by Stats.1941, c. 1201, p. 2972, § 1. Amended by Stats.1965, c. 1815, p. 4189, § 1.)

Cross References

Certification for hearing and examination after conviction, see Welfare and Institutions Code § 6302.

Paroles, see § 3040 et seq.

§ 288a. Perversion; copulation with the mouth; punishment

Any person participating in an act of copulating the mouth of one person with the sexual organ of another is punishable by imprisonment in the state prison for not exceeding 15 years, or by imprisonment in the county jail not to exceed one year; provided, however, whenever any person is found guilty of the offense specified herein, and it is charged and admitted or found to be true that he is more than 10 years older than his coparticipant in such an act, which coparticipant is under the age of 14, or that he has compelled the other's participation in such an act by force, violence, duress, menace, or threat of great bodily harm, he shall be punished by imprisonment in the state prison for not less than three years. The order of commitment shall expressly state whether a person convicted hereunder is more than 10 years older than his coparticipant and whether such coparticipant is under the age of 14. The order shall also state whether a person con-

Title

vict
viole
(Add
Ex.S
Stats

Asexu
Contri
Convic
§ 1
Convic
Felony
Proced
Punish
Min
Min
Regist
Sex of
Violati

§ 28

T
which
by for
an act
such c
forma
if four
the de
from 1
(Adde

§ 28

§ 29

D
July,
fornia
infam
define
of Sec
(d) of
offense
any pe
of the
any pe
charge
because
mentio
time h
fender
6300)

Title 9

SEX PERVERSION

§ 290

victed hereunder has compelled coparticipation in his act by force, violence, duress, menace, or threat of great bodily harm.

(Added by Stats.1921, c. 848, p. 1633, § 2. Amended by Stats.1950, 1st Ex.Sess., c. 56, p. 512, § 1; Stats.1952, 1st Ex.Sess., c. 23, p. 380, § 3; Stats.1955, c. 274, p. 729, § 1.)

Cross References

Asexualization, see § 645.

Contributing to delinquency of minors, see Welfare and Institutions Code § 702.

Conviction as ground for revocation of county teaching certificate, see Education Code § 13217.

Conviction as ground for revocation of teaching credential, see Education Code § 13206.

Felony, defined, see § 17.

Procedure to determine sexual psychopaths, see Welfare and Institutions Code § 6302.

Punishment,

Minimum life imprisonment but no maximum prescribed, see § 671.

Minimum punishment, see §§ 18a, 18b.

Registration of sex offenders, see § 290.

Sex offense as including violation of this section, see Education Code § 12912.

Violation as sex offense within Education Code, see Education Code § 12912.

§ 288b. Perversion; oral copulation; acting in concert by force or violence; punishment

The provisions of Section 288a notwithstanding, in any case in which defendant, voluntarily acting in concert with another person, by force or violence and against the will of the victim participated in an act of oral copulation, either personally or by aiding and abetting such other person, such fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant, defendant shall suffer confinement in the state prison from five years to life.

(Added by Stats.1967, c. 1551, p. 3722, § 3.)

§ 289. Blank

§ 290. Registration of sex offenders

Duty to register; time. Any person who, since the first day of July, 1944, has been or is hereafter convicted in the State of California of the offense of assault with intent to commit rape or the infamous crime against nature, under Section 220, or of any offense defined in Sections 266, 267, 268, 285, 286, 288, 288a, subdivision 1 of Section 647a, subdivision 2 or 3 of Section 261, subdivision (a) or (d) of Section 647, or subdivision 1 or 2 of Section 314, or of any offense involving lewd and lascivious conduct under Section 272, or any person who since such date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since such date or at any time hereafter is discharged or paroled from a penal institution where he was confined because of the commission or attempt to commit one of the above-mentioned offenses; or any person who since such date or at any time hereafter is determined to be a mentally disordered sex offender under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and In-

Title 9

OF CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS

| Chapter | Section | |
|---------|---------|--|
| 1. | 261 | Rape, Abduction, Carnal Abuse of Children, and Seduction ---- |
| 2. | 270 | Abandonment and Neglect of Children ----- |
| 3. | 274 | Abortions ----- |
| 4. | 278 | Child Stealing ----- |
| 5. | 281 | Bigamy, Incest, and the Crime against Nature ----- |
| 6. | 290 | Violating Sepulture and the Remains of the Dead [Repealed] -- |
| 7. | 299 | Of Crimes Against Religion and Conscience, and other Offenses Against Good Morals ----- |
| 7.5 | 311 | Obscene Matter ----- |
| 7.6 | 313 | Harmful Matter ----- |
| 8. | 311 | Indecent Exposure, Obscene Exhibitions, Books and Prints, and Bawdy and Other Disorderly Houses ----- |
| 9. | 319 | Lotteries ----- |
| 10. | 330 | Gaming ----- |
| 10.5 | 337.1 | Horse Racing ----- |
| 11. | 338 | Pawnbrokers ----- |
| 12. | 346 | Other Injuries to Persons ----- |

Chapter 1

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION

| Sec. | |
|-------|--|
| 261. | Rape defined. |
| 261.5 | Unlawful sexual intercourse with female under age 18. |
| 262. | Rape; defendant under 14; proof of physical ability. |
| 263. | Rape; essentials; sufficiency of penetration. |
| 264. | Rape; unlawful intercourse; recommendation of jury; discre- tion of court. |
| 264.1 | Rape; acting in concert by force or violence; punishment. |
| 265. | Abduction for marriage or defilement; punishment. |
| 266. | Inveiglement or enticement of unmarried female under 18 for pur- poses of prostitution, etc.; aiding or abetting; procuring female for illicit intercourse by false pretenses; punishment. |
| 266a. | Abduction or procurement by fraudulent inducement for prostitu- tion; punishment. |
| 266b. | Abduction to live in illicit relation; punishment. |
| 266c. | Bringing into state Chinese or Japanese women for sale or slavery; punishment. |
| 266d. | Receiving money for placing female for purposes of cohabitation. |
| 266e. | Purchasing female for purposes of prostitution or placing her for immoral purposes. |
| 266f. | Sale of female for immoral purposes. |
| 266g. | Placing or permitting placement of wife in house of prostitution; punishment. |

Title 9

 Sec.
 266h. P
 266i. P
 267. A

 268. Se
 269. Se

 269a. Co
 269b. A

 Advertisi
 Code

§ 261

 Raj
 not the
 stances:

 1.
 ness of
 sent;

 2.
 or viole

 3.
 and imr
 ecution,
 adminis

 4.
 and this

 5.
 ting the
 pretense
 duce su

 (Enacted
 1897, c.
 c. 1301,

 Administe
 Assault wi
 Contributi
 Conviction
 County
 Teachi
 Fingerpri
 identifi
 Punishme
 Registrati
 School cer
 section
 School cla
 Sex offens
 Soliciting
 Sufficiency

Eli Toney DelRay
Sup. Ct. No. ZM 001979

Sexually Violent Predator Evaluation
By Dr. Jatinder K. Singh, Ph.D.
First and Last page: 2 pages
(Dated 05-06-96)

ATTACHMENT
"E"

State of California-Health and Welfare Agency
 ASSESSMENTS/CONFERENCES/EVALUATIONS/REPORTS
 MH 5728 (New 2/88)

Department of Mental Health
 Patton State Hospital

Title: SEXUALLY VIOLENT PREDATOR EVALUATION

Date: May 6, 1996

IDENTIFYING DATA:

Inmate name: Delray, Eli
 Date of Birth: 8/10/55
 Age: 40
 CDC Number: D-53484
 CDC Facility: Chuckawalla Valley State Prison
 CII Number: A07053516
 Release Date: 5-21-96
 Evaluation Date: 5-6-96

Commitment Offense: Mr. Eli Delray (AKA Anthony Pringle) is currently serving a 3 year prison term after conviction on PC 314.1, indecent exposure. This charge stems from an incident which occurred on 7/10/93 in Los Angeles County. At the time of his arrest, Mr. Delray was on parole following a 1987 conviction of three counts of PC 288(a), lewd and lascivious behavior with a child under the age of 14. For these convictions he was originally sentenced to 12 years. A four year old female was the victim in these 1987 convictions. In 1974 Mr. Delray was convicted in Ohio on two counts of rape and one count of "gross imposition" (also a sex offense). In this case, there were two female victims ages 6 and 7.

On May 6, 1996 Mr. Delray was informed about this evaluation and that the evaluation would result in this report to the Board of Prison Terms. The Notification was explained to him and he asked several questions about the nature of the evaluation which made it appear that he understood the nature and purpose of the interview and evaluation. He agreed to be interviewed for evaluation as a Sexually Violent Predator and signed the attached Notification Form.

For the purpose of this evaluation, I reviewed the California Department of Corrections (CDC) central file and medical file at Chuckawalla Valley State Prison. In addition, Mr. Delray participated in a 2.5 hour interview. Other DMH staff were present during this interview.

FINDINGS:

A. Has the inmate been convicted of a sexually violent offense against two or more victims? YES

Mr. Delray has most recently been convicted of PC 314.1, indecent exposure. In 1987 he was convicted on 3 counts of PC 288(a), lewd and lascivious behavior with a child under the age of 14. In 1984 he was convicted in Ohio of raping two girls who were also under the age of 14. Following is a description of the crimes from the POR and police reports:

Mr. Delray is currently serving a 3 year sentence for indecent exposure. According to the POR, on 8/10/93 Mr. Delray was observed at an apartment complex standing outside stroking his erect penis and looking into the witnesses' building. Apparently this behavior went on for some time before the police arrived. The witnesses stated that when Mr. Delray noted that he was being observed by the witnesses, he gestured to them to come

State of California-Health and Welfare Agency
ASSESSMENTS/CONFERENCES/EVALUATIONS/REPORTS
MH 5728 (New 2/88)

Department of Mental Health
Patton State Hospital

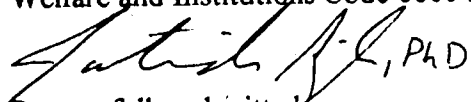
Title: SEXUALLY VIOLENT PREDATOR EVALUATION

Date: May 6, 1996

would suggest a change or decline in his risk for reoffense. It is because of the pervasive nature of his diagnosed mental disorder that he is predisposed to engage in sexually violent criminal behavior again.

CONCLUSION:

It is the professional opinion of this evaluation that this inmate does meet all three criteria for commitment under Welfare and Institutions Code 6600 as a Sexually Violent Predator.


Respectfully submitted,
Jatinder K. Singh, Ph.D.
PSY 14199

Eli Toney DelRay
Sup. Ct. No. ZM 001979

Sexually Violent Predator Evaluation
By Dr. Patricia Kirkish, Ph.D.
First and Last page: 2 pages
(Dated 05-13-96)

ATTACHMENT
"F"

State of California-Health and Welfare Agency
ASSESSMENT/CONFERENCES/EVALUATIONS/REPORTS
 MH 5728 (New 2/88)

Department of Mental Health
 Patton State Hospital

Title: SEXUALLY VIOLENT PREDATOR EVALUATION

Date: May 13, 1996

IDENTIFYING DATA:

Inmate Name: Eli Delray
 Evaluation Date: May 6, 1996
 DOB: 8/10/58
 Age: 37
 CDC Number: D-53484
 CDC Facility: Chuckawalla Valley State Prison (CVSP)
 CII No.: A07053516
 Commitment County: Los Angeles
 RRD: 5/21/96

Commitment Offense: Mr. Eli Delray, a parole violator, is serving a twelve-year prison sentence, having been convicted of three counts of section 288 (A) of the Penal Code, Lewd and Lascivious acts with a child under the age of fourteen. The crimes occurred between 1984 and 1985. The victim of all three of these counts was the two-year-old female child of the inmate's common-law wife. His parole was violated for Indecent Exposure with Prior 288 PC conviction, PC 314(1), that occurred on 7/10/93.

Additionally, the inmate has a prior conviction in Ohio, Court of Common Plea, County of Cuyahoga for two counts of rape (1199/20907.02) and one count of Sex Offense-Gross Imposition (1199/20907.05). These crimes occurred in 1974; the victims were the female children of the inmate's girlfriend.

The inmate was fully informed about the nature and purpose of the interview and evaluation, he understood this and indicated his willingness to participate in the interview by signing the Notification Form, affirmatively. The inmate was interviewed on 5/6/96 for two hours thirty minutes by Patricia Kirkish, Ph.D. in a contact interview at CVSP; additionally, the Control File (C-File) and Medical Chart were both reviewed and considered.

FINDINGS:

A. Has the inmate been convicted of a sexually violent offense against two or more victims? YES.

- In 1974, Mr. Delray was convicted of two counts of rape and one count of a sex offense - gross imposition. One victim was the six-year-old daughter of his girlfriend and the second victim was her seven-year-old friend.

Victim one reported, in a Cleveland Police Department Supplementary Report, dated 8-14-74, that, "on 8-7-74 Tony, woke her up took off her pants and unzipped his pants and pulled out his wiener [sic] and put it in her money (points to vagina) and that after he moved around white stuff came out and she went into the bathroom and wiped herself with toilet tissue. On 8-12-74 she was again sleeping and he again woke her up and removed her pants this time he put his fingers in her money and moved them around." It was further reported that the grandmother of victim one noticed discharge on her granddaughter's panties on 7/12/74 and on 8/7/74.

The second victim was a seven-year-old friend of victim one. According to the

"Virtual" stranger

SEXUALLY VIOLENT PREDATOR
 EVALUATION

CONFIDENTIAL PATIENT INFORMATION
 SEE W&I CODE SECTION 5328

ELI DELRAY
 D-53484
 Chuckawalla Valley
 State Prison (CVSP)

State of California-Health and Welfare Agency
ASSESSMENT/CONFERENCES/EVALUATIONS/REPORTS
MH 5728 (New 2/88)

Department of Mental Health
Patton State Hospital

Title: SEXUALLY VIOLENT PREDATOR EVALUATION

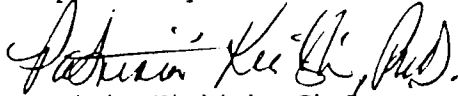
Date: May 13, 1996

This individual was angry, oppositional and withholding; he demonstrated no remorse or concern for his victims. He denied any sexual crimes despite his extensive criminal history. He has received treatment at POC, but it would appear he had gained little about his paraphilia, substance abuse or sexuality. Therefore, it is the opinion of this evaluator that this inmate is not treated. There is no evidence to suggest he would be willing or able to control his predatory violent sexual behavior in the future.

CONCLUSION:

Mr. Delray meets all three criteria for commitment under W&IC 6600.

Respectfully submitted,



Patricia Kirkish, Ph.D.
PSY 9667

SEXUALLY VIOLENT PREDATOR
EVALUATION

CONFIDENTIAL PATIENT INFORMATION

SEE W&I CODE SECTION 5328

ELI DELRAY
D-53484
Chuckawalla Valley
State Prison (CVSP)

Eli Toney DelRay
Sup. Ct. No. ZM 001979

Face Page of Class Action Pleading to the
"Supreme Court of The State of California"
1 page
(Date Unknown)

No. S 057336

B 103020

Real Party in Interest's
Reply Brief on The Merits

ATTACHMENT
"G"

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

| | |
|---|------------------------|
| GIL GARCETTI, as District Attorney, etc., |) S 057336 |
| |) |
| Petitioner, |) |
| |) B103020 |
| v. |) |
| |) (LASC Nos. ZM001798, |
| THE SUPERIOR COURT FOR THE |) ZM001801, ZM001814, |
| COUNTY OF LOS ANGELES, |) ZM001847, ZM001854, |
| |) ZM001867, ZM001869 |
| Respondent; |) ZM001884, ZM001886, |
| |) ZM001904, ZM001920, |
| KENNETH KASTEN RASMUSON et al., |) ZM001904, ZM001920, |
| |) ZM001930, ZM001945, |
| Real Parties in Interest. |) ZM001946, ZM00196) |
| |) |

REAL PARTY IN INTEREST'S
REPLY BRIEF ON THE MERITS

MICHAEL P. JUDGE, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

Albert J. Menaster,
Melvin Higashi,
David Yamada,
Nancy Ramseyer,
John J. Vacca,
Jack T. Weedon,

Deputy Public Defenders

Appellate Branch
320 West Temple Street, Suite 590
Los Angeles, California 90012
Telephone: (213) 974-3067

Attorneys for Real Parties in Interest

Eli Toney DelRay
Sup. Ct. No. ZM 001979

Copies of Handwritten Notes and Requests
'Addressed'

"Legal Agenda to Nancy Ramseyer"

(Assorted Dates)

5 Requests = 7 pages

ATTACHMENT
"H"

1. Full Chart from Hospital - MAY 23, 1996 - JAN 98
2. CDC Screening ^{Form} for S.V.P. petition 98
3. BPT probable cause determination MAY 21, 1996
4. Full cdc file 1987 - present
5. Investigative Reports from Michelle Mudgett
6. Hold Dr. Anderson's report until I review it ^{for} ~~error~~
7. Get transcript of arraignment June 1996.
8. Check on Property At ASH
9. Subpoena records from CDC showing percentages
 { of sexual assaults against staff ~~by~~ by category
 of sex offenders - vs. other offenders. per year.
10. Medical Reports from Breonna Cline
 Both
11. Medical Reports from Ohio Both Victim
12. Transcripts from Ohio
13. Police Reports from Ohio

CASE People v. Superior Court Howard
 70 cal app 4th 136 on hearsay documents

Eli DELRAY

10-21-99

LEGAL AGENDA TO MARCY RAMSEYER

- ✓ 1. My immediate personal information is limited and is privileged information. It is for your eyes only. This privilege is not to be breached, given, conveyed, bartered, sold, lent or otherwise used to be broken, without the express written permission of Eli Delray, Esq. Delray, MOBI = Kathy Knight 223-871-0013
2. MAKE COPY OF CH. Lindgraf & USE FILM Products, CH. U.S. 297.
- ✓ 3. Copy of original 2nd complaint filed in 1996, for comparison with amended complaint.
- ✓ 4. Copy of Ohio Revised Code Sections 2902.02 and 2907.05.
5. Copy of Public Law 94-680 Section 3502(b)(1) in WTC case book.
6. Motion to Dismiss with a plea of not guilty concerning attempted kidnapping under Ohio Rev. Code 2600. Not heard - too hearing.
7. Motion for collection subpoena and for Summary Judgment based on *People v. Rice* 500 F.2d 697 and *People v. Collocazione* 118 S.Ct. 1246 on basis that this is not an enhancement or offense in nature, but the charged offense itself. (See Kistner's opposition to motion to dismiss, pg. 8^{Footnote} and footnote arguments) Attention to Jeopardy claims.

ELI DELRAY
10-24-99

PG. 2 AGENDA continued:

8. Motion to Disqualify emulations from 1976 and 1978 (some time to discuss ground for disqualifications with you)

9. Habeas Corpus writ on Legality of Confinement under Penal Code 3000, and WTI code section 6250, Denial of Due Process, etc

Later on line

10. Copy of best available information in case # A766927, showing arrest, booking, or detention, and an assessment of individual's proceedings, with form P766917 to show qualifying crime.

11. Transcript of testimony of Brian R. Sr. and Brian R. Sr. in last hearing back of previously discussed matter

Thank You

ELI DELRAY

C.C.:
client

ORIGINAL:
Under Review

5
Eli DeRAY

LEGAL AGENDA TO NANCY RAMSEYER 4-20-2000

- x 1. TRANSCRIPT OF ARRAIGNMENT JUNE 18, 1996 in Dept 95.
- x 2. MEDICAL chart from A.S.H. MAY 23, 1996 - JAN. 21, 1997.
- Lathan
Watkins x 3. complaints against staff, Police Reports, staff Reports to P.R.A. at A.S.H. Pertaining to separate incidents involving Respondent.
- x 4. C.D.C. FILE D-53484
- x 5. Rogers writ, Plaintiff's response
- x 6. List of ALL ^{DMH} EVALUATORS statewide, the dates they were on S.V.P. panel and the date they left and reason for leaving, and a statewide list of current DMH evaluators still performing evaluations.
- x 7. Packet on chart and restraint issue at A.S.H., that the P.R.A. has.
- 8. Good copies of the interdisciplinary Patient/Family health Education Record, from A.S.H. chart.
- properly x 9. What happened to my copies of certificate for Anger management + Project Change.

~~See also Section 11214-200~~

Legal Agenda To NANCY RAMSEYER 5-19-2001

- do myself x 1. Obtain copy of C.C.R Title 15 section 2600.1 date filed 12-26-95, Register 95, No. 52, Emergency operative 1-1-96. Obtain from Secretary of State, by mail; Phone and fax, or try Web site; <http://www.ss.ca.gov>, and download pertinent section, best if can obtain full history.
- x 2. TRANSCRIPT of ARRAIGNMENT June 18, 1996 IN Dept. 95
- properly 3. Find out what happened to copy of Chrono and certificate that was in A.S.H. file. see A.S.H. note dated 6-15-98
- x 4. Medical chart from A.S.H. MAY 23, 1996 - JAN 21, 1998
5. CDC Central file D-53484
- x 6. List of all DMIT evaluators statewide, the dates they were on S.U.P. panel. List for Past + Present.
- x 7. Actual writ for Gerald Rogers.
- x 8. Complaints and investigative reports from P.R.A. at A.S.H. Michele Mudgett - ON Restraint issues.
- Int. Am. & Nat. 9. Filed Police reports and complaints on staff with H.P.O. Hospital Peace Officers.

Eli DeRay

MAY 28, 2000

Dear Nancy, Ramseyer,

IN ORDER to have the exhibits that I may need for my writ on DENIAL of motions and the Probable Cause hearing. I respectfully request you to send me these documents. Some of them are documents I've been asking you for, for awhile, so if they seem familiar, that's why.

I will need these items in hand before I leave for the hospital, or at the least, as many as possible. Timeliness is most important to the filing of my writ for review. *People v. Butler*, 68 Cal App 4th 421 and *IN RE PARKER*; 60 Cal App 4th 1453, FN 8, pg 1460.

1. COURT CALENDAR of my appearances - 1996 to present.
2. TRANSCRIPT of JUNE 18th ??, 1996 Assignment, Dept 95?
3. TRANSCRIPT of JAN 18th, 2000 Argumental record on Prior.
4. TRANSCRIPT of JAN 19th, 2000 motion on Speech + Due Process.
5. TRANSCRIPT of MAY 23rd + 25th, 2000 closing Arguments, motion.
6. C.D.C. C-File, D-53484; Chronological History.
7. A.S.H. Chart; MAY 23, 1996 to JAN 21, 1998.
8. D.M.H. EVALUATOR List, showing DR's Kirkish and Singh.
9. Writ and D.A. Response Pertaining to Gerald Rogers, by Pamela King, that we previously talked about.

CONT pg 2

ELI DELRAY

MAY 28, 2000

TO: NANCY RAMSEYER

P. 2

10. FULL History of C.G.R. Title 15 § 2600.1, Filed 12-26-95, REGISTER 95, No. 52, operative 1-1-96, AND Later AMENDMENTS.
11. D.M.H. Screening Protocol Form, used in April, 1996.
12. C.D.C. Initial Screening Form, used by C.D.C. staff, (counselor) to screen me as sexually violent predator.
13. Full copy of C.D.C. file, D-53484. You told me it was already in the process of being copied by the paralegal with that I may be able to locate the other C.D.C. things I've asked for.

It's very important that I have as much of this paper work as possible before going to the hospital, because, once I'm there, it will be (10) TEN TIMES HARDER for me to obtain this stuff.

P.S. Please get me a copy of the order from Judge Shabo that I don't be housed on Program 7.

Thank you for your time and consideration in this matter. Oh, if you have a generic copy of a writ pertaining to denial of a motion and for Probable Cause, could you also include a copy, for me to use as a template?

Thank You!

Sincerely,

Eli DelRay

ORIG: NANCY

CC: My file

Eli Toney DelRay
Sup. Ct. No. ZM 001979

Senate Bill 1143, Sexually Violent Predators Act
Stats. 1995, ch. 762, s3, as passed
[6 pages]

ATTACHMENT
"I"

Ch. 762

STATUTES OF 1995

CRIMINAL PROCEDURE—POST-SENTENCE CONFINEMENT AND EVALUATION OF SEXUAL PREDATORS

CHAPTER 762

S.B. No. 1143

AN ACT to amend Section 6250 of, and to add Article 4 (commencing with Section 6600) to Chapter 2 of Part 2 of Division 6 of, the Welfare and Institutions Code, relating to sexual predators.

[Approved by Governor October 10, 1995.]

[Filed with Secretary of State October 11, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1143, Mountjoy. Sexually violent predators.

Existing law sets forth specified punishments for sex crimes, including, among others, rape, sodomy, oral copulation, penetration with a foreign object, and lewd and lascivious conduct.

This bill would provide that whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate sentence or whose parole has been revoked, may be a sexually violent predator, he or she shall, at least 6 months prior to that individual's scheduled date for release from prison, refer the person for evaluation and, under specified circumstances, request that a petition for commitment be filed, and the proceedings be handled, by either the district attorney or the county counsel of the county in which the person was convicted of the offense for which he or she is under the jurisdiction of the Department of Corrections. The bill would require the Department of Corrections and the Board of Prison Terms to screen the person based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history before referring the person to the State Department of Mental Health for a full evaluation.

This bill would set forth procedures and standards for the review of the petition for commitment and would provide that a person who is the subject of the petition is entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and access to all relevant medical and psychological records and reports.

This bill would require a court or jury to determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court would be required to direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole. If the court or jury determines that the person is a sexually violent predator, the person would be committed for 2 years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health that is located on the grounds of an institution under the jurisdiction of the Department of Corrections until his or her diagnosed mental disorder has so changed that he or she is not likely to commit an act of sexual violence.

This bill would require annual evaluations of those individuals committed as sexually violent predators.

The bill also would set forth procedures and standards for requesting and hearing petitions for conditional and unconditional release.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that a small but extremely dangerous group of sexually violent predators that have diagnosable mental disorders can be identified

ES OF 1995

1995-1996 REGULAR SESSION

Ch. 762, § 3

ENT

while they are incarcerated. These persons are not safe to be at large and if released represent a danger to the health and safety of others in that they are likely to engage in acts of sexual violence. The Legislature further finds and declares that it is in the interest of society to identify these individuals prior to the expiration of their terms of imprisonment. It is the intent of the Legislature that once identified, these individuals, if found to be likely to commit acts of sexually violent criminal behavior beyond a reasonable doubt, be confined and treated until such time that it can be determined that they no longer present a threat to society.

The Legislature further finds and declares that while these individuals have been duly punished for their criminal acts, they are, if adjudicated sexually violent predators, a continuing threat to society. The continuing danger posed by these individuals and the continuing basis for their judicial commitment is a currently diagnosed mental disorder which predisposes them to engage in sexually violent criminal behavior. It is the intent of the Legislature that these individuals be committed and treated for their disorders only as long as the disorders persist and not for any punitive purposes.

SEC. 2. Section 6250 of the Welfare and Institutions Code is amended to read:

6250. As used in this part, "persons subject to judicial commitment" means persons who may be judicially committed under this part as mentally disordered sex offenders pursuant to Article 1 (commencing with Section 6300), sexually violent predators pursuant to Article 4 (commencing with Section 6600), or mentally-retarded persons pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of this part.

Nothing in this part shall be held to change or interfere with the provisions of the Penal Code and other laws relating to mentally disordered persons charged with crime or to the criminally insane.

This part shall be liberally construed so that, as far as possible and consistent with the rights of persons subject to commitment, such persons shall be treated, not as criminals, but as sick persons.

SEC. 3. Article 4 (commencing with Section 6600) is added to Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, to read:

Article 4. Sexually Violent Predators

6600. As used in this article, the following terms have the following meanings:

(a) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(b) "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction and a determinate sentence: a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code.

(c) "Diagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

Additions or changes indicated by underline; deletions by asterisks * * *

4605

STATUTES OF 1995

Ch. 762, § 3

(d) "Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

(e) "Predatory" means an act is directed toward a stranger or individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

6601. (a) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder such that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h)
violet
requ
subdi
made
file a

(i)
comm
conv
Corr
distri
desig
proce

(j)
articl

660
there
in sex
the p
judge
judge
to det
health
upon

660
of cor
his or
repor
or he
profes
behal

(b)
dema

(c)
the tr

(d)

660

a sex
that t
releas
person
or ju
comm
appro
Menta
unless
a new
pursu
towar
the co
the ti
institu

660
of the
menta
indige

ES OF 1995

1995-1996 REGULAR SESSION

Ch. 762, § 3

ent overt act

with whom a
victimization.

ie actor may

al who is in
er serving a
nally violent
led date for
tion.he Board of
it predatory
story. This
nt developed
Department
likely to be
to the State
e criteria indance with a
nt of Mental
fined in this
diagnosable
of reoffense
psychosexual
tal disorder.ing psychia-
logist, desig-
person has a
ual violence
all forward a
esignated in
ents shall be
(i) who maysion (d) does
ut the other
ental Health
nals selectedis conducted,
independent
t the person
ls selected to
e purpose of
criteria to be
on appreciatections or the
government
ent of mental
e a doctoral
apply to any
of any other

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she is under the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

6602. A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition. If the judge determines that there is probable cause, the judge shall order that a trial be conducted to determine whether the person is, by reason of diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections.

6603. (a) A person subject to this article shall be entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.

(c) If no demand is made by the person subject to this article or the petitioning attorney, the trial shall be before the court without jury.

(d) A unanimous verdict shall be required in any jury trial.

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for two years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a new petition for commitment under this article or unless the term of commitment changes pursuant to subdivision (e) of Section 6605. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to

Ch. 762, § 3

STATUTES OF 1995

examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for a period of two years from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

★ 6606. (a) A person who is committed under this article shall be provided with programming by the State Department of Mental Health which shall afford the person with treatment for his or her diagnosed mental disorder.

(b) Amenability to treatment is not required for a finding that any person is a person described in Section 6600, nor is it required for treatment of that person. Treatment does not mean that the treatment be successful or potentially successful, nor does it mean that the person must recognize his or her problem and willingly participate in the treatment program.

(c) The programming provided by the State Department of Mental Health in facilities shall be consistent with current institutional standards for the treatment of sex offenders, and shall be based on a structured treatment protocol developed by the State Department of Mental Health. The protocol shall describe the number and types of treatment components that are provided in the program, and shall specify how assessment data will be used to determine the course of treatment for each individual offender. The protocol shall also specify measures that will be used to assess treatment progress and changes with respect to the individual's risk of reoffense.

★ 6607. (a) If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director shall forward a report and recommendation for conditional release in accordance with Section 6608 to the

STATUTES OF 1995

1995-1996 REGULAR SESSION

Ch. 762, § 3

cess to all records

ten notice of his or
The notice shall
r form to the court
er right to petition
ing to determine
ion has so changed
f discharged. The
y represent him or

se exists to believe
t he or she is not a
in sexually violent
issue.

resent and shall be
o him or her at the
ursuant to subdivi-
to demand a jury
y the state. The
d to have experts
ert if the person is
ing shall be on the
diagnosed mental
ty of others and is

hearing conducted
run for a period of
committed person,
d.

m to believe that a
ly violent predator,
rocedures set forth
le. If the superior
he or she shall be

ded with program-
son with treatment

person is a person
1. Treatment does
es it mean that the
reatment program.

lth in facilities shall
offenders, and shall
artment of Mental
omponents that are
ed to determine the
o specify measures
to the individual's

s diagnosed mental
f predatory sexual
tor shall forward a
ection 6608 to the

...

county attorney designated in subdivision (i) of Section 6601, the attorney of record for the person, and the committing court.

(b) When a report and recommendation for conditional release is filed by the Director of Mental Health pursuant to subdivision (a), the court shall set a hearing in accordance with the procedures set forth in Section 6608.

★ 6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 21 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

Additions or changes indicated by underline; deletions by asterisks * * *

4609

Eli Toney DelRay
Sup. Ct. No. ZM 001979

Assembly Bill 888, Sexually Violent Predators Act
Stats. 1995, ch. 763, s3, as passed
[6 pages]

ATTACHMENT
"J"

Ch. 762, § 3

STATUTES OF 1995

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

SEXUALLY VIOLENT PREDATORS

CHAPTER 763

A.B. No. 888

AN ACT to amend Section 6250 of, and to add Article 4 (commencing with Section 6600) to Chapter 2 of Part 2 of Division 6 of, the Welfare and Institutions Code, relating to sexual predators.

[Approved by Governor October 10, 1995.]

[Filed with Secretary of State October 11, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 888, Rogan. Sexually violent predators.

Existing law sets forth specified punishments for sex crimes, including, among others, rape, sodomy, oral copulation, penetration with a foreign object, and lewd and lascivious conduct.

This bill would provide that whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate sentence or whose parole has been revoked, may be a sexually violent predator, he or she shall, at least 6 months prior to that individual's scheduled date for release from prison, refer the person for evaluation and, under specified circumstances, request that a petition for commitment be filed, and the proceedings be handled, by either the district attorney or the county counsel of the county in which the person was convicted of the offense for which he or she is under the jurisdiction of the Department of Corrections. The bill would require the Department of Corrections and the Board of Prison Terms to screen the person based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history before referring the person to the State Department of Mental Health for a full evaluation.

This bill would set forth procedures and standards for the review of the petition for commitment and would provide that a person who is the subject of the petition is entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and access to all relevant medical and psychological records and reports.

This bill would require a court or jury to determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court would be required to direct that the person be released at the conclusion of the term for which he or she was

ATUTES OF 1995

conditional release
patient status in
section 1600) of Part

appropriate forensic
denied, the person
late of the denial.
the burden of proof

r of the treatment
taken by the court
treatment facility.

ion shall not count
onfined in a locked
in a locked facility

ion 6600) to Chapter
to sexual predators.

among others, rape,
lascivious conduct.
etermines that an
rrections, and who
, may be a sexually
scheduled date for
ied circumstances,
idled, by either the
as convicted of the
Corrections. The
n Terms to screen
predatory offense
efore referring the

of the petition for
tion is entitled to a
essional persons to
want medical and

reasonable doubt,
satisfied beyond a
ould be required to
ich he or she was

1995-1996 REGULAR SESSION

Ch. 763, § 3

initially sentenced, or that the person be unconditionally released at the end of parole. If the court or jury determines that the person is a sexually violent predator, the person would be committed for 2 years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health that is located on the grounds of an institution under the jurisdiction of the Department of Corrections until his or her diagnosed mental disorder has so changed that he or she is not likely to commit an act of sexual violence.

This bill would require annual evaluations of those individuals committed as sexually violent predators.

The bill also would set forth procedures and standards for requesting and hearing petitions for conditional and unconditional release.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that a small but extremely dangerous group of sexually violent predators that have diagnosable mental disorders can be identified while they are incarcerated. These persons are not safe to be at large and if released represent a danger to the health and safety of others in that they are likely to engage in acts of sexual violence. The Legislature further finds and declares that it is in the interest of society to identify these individuals prior to the expiration of their terms of imprisonment. It is the intent of the Legislature that once identified, these individuals, if found to be likely to commit acts of sexually violent criminal behavior beyond a reasonable doubt, be confined and treated until such time that it can be determined that they no longer present a threat to society.

The Legislature further finds and declares that while these individuals have been duly punished for their criminal acts, they are, if adjudicated sexually violent predators, a continuing threat to society. The continuing danger posed by these individuals and the continuing basis for their judicial commitment is a currently diagnosed mental disorder which predisposes them to engage in sexually violent criminal behavior. It is the intent of the Legislature that these individuals be committed and treated for their disorders only as long as the disorders persist and not for any punitive purposes.

SEC. 2. Section 6250 of the Welfare and Institutions Code is amended to read:

6250. As used in this part, "persons subject to judicial commitment" means persons who may be judicially committed under this part as mentally disordered sex offenders pursuant to Article 1 (commencing with Section 6300), sexually violent predators pursuant to Article 4 (commencing with Section 6600), or mentally retarded persons pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of this part.

Nothing in this part shall be held to change or interfere with the provisions of the Penal Code and other laws relating to mentally disordered persons charged with crime or to the criminally insane.

This part shall be liberally construed so that, as far as possible and consistent with the rights of persons subject to commitment, those persons shall be treated, not as criminals, but as sick persons.

SEC. 3. Article 4 (commencing with Section 6600) is added to Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, to read:

Article 4. Sexually Violent Predators

6600. As used in this article, the following terms have the following meanings:

(a) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. Jurors shall be admonished that they

Additions or changes indicated by underline; deletions by asterisks * * *

Ch. 763, § 3

STATUTES OF 1995

may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(b) "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction and a determinate sentence: a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code.

(c) "Diagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) "Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

(e) "Predatory" means an act is directed toward a stranger or individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

6601. (a) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder such that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

STATUTES OF 1995

1995-1996 REGULAR SESSION

Ch. 763, § 3

fenses absent relevant
erson a danger to the
age in sexually violent

tted by force, violence,
the victim or another
f this article and result
raph (2) of subdivision
n 264.1, subdivision (a)
de, or sodomy or oral

condition affecting the
ommission of criminal
and safety of others.
of a recent overt act

dividual with whom a
pose of victimization.
od that the actor may

n individual who is in
who is either serving a
be a sexually violent
d's scheduled date for
this section.

ns and the Board of
ily violent predatory
ational history. This
instrument developed
with the Department
person is likely to be
ie person to the State
meets the criteria in

in accordance with a
Department of Mental
or as defined in this
ment of diagnosable
the risk of reoffense
nal and psychosexual
of mental disorder.

o practicing psychia-
g psychologist, desig-
hat the person has a
cts of sexual violence
ealth shall forward a
ounty designated in
g documents shall be
bdivision (i) who may

subdivision (d) does
n (d), but the other
or of Mental Health
professionals selected

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she is under the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

6602. A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition. If the judge determines that there is probable cause, the judge shall order that a trial be conducted to determine whether the person is, by reason of diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections.

6603. (a) A person subject to this article shall be entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.

(c) If no demand is made by the person subject to this article or the petitioning attorney, the trial shall be before the court without jury.

(d) A unanimous verdict shall be required in any jury trial.

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court

Ch. 763, § 3

STATUTES OF 1995

or jury determines that the person is a sexually violent predator, the person shall be committed for two years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a new petition for commitment under this article or unless the term of commitment changes pursuant to subdivision (e) of Section 6605. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for a period of two years from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

6606. (a) A person who is committed under this article shall be provided with programming by the State Department of Mental Health which shall afford the person with treatment for his or her diagnosed mental disorder.

(b) Amenability to treatment is not required for a finding that any person is a person described in Section 6600, nor is it required for treatment of that person. Treatment does

1995-1996

not mean
person mu

(c) The
be consist
be based
Health. T
provided i
course of
that will b
risk of rec

6607. (c)
disorder h
violence w
report and
county att
person, an

(b) Whe
Mental He
procedures

6608. (a)
sexually vi
unconditio
Health. I
concurrenc
following a
had not so
he or she
treatment
contains fa
changed th
committed
possible to
shall deny
uncondition

(b) The (c)
(i) of Secti
Director of

(c) No h
under com
Health for

(d) The (c)
danger to t
sexually vi
supervision
committed
disorder w
committed
by the stat
release pro
jurisdiction
court shall
commitmen
danger to t
sexually vic
person has
program.

STATUTES OF 1995

1995-1996 REGULAR SESSION

Ch. 763, § 3

the person shall be
f Mental Health for
l by the Director of
nger than two years
cident to the filing of
commitment changes
elease shall not count
n a locked facility by
ty shall count toward
the grounds of an

nitted to the custody
ination of his or her
in, or if he or she is
rofessional person to
access to all records

ritten notice of his or
08. The notice shall
ver form to the court
her right to petition
earing to determine
lition has so changed
if discharged. The
ney represent him or

use exists to believe
at he or she is not a
e in sexually violent
ie issue.

present and shall be
to him or her at the
pursuant to subdivi-
it to demand a jury
by the state. The
nd to have experts
pert if the person is
ring shall be on the
s diagnosed mental
ety of others and is

hearing conducted
run for a period of
e committed person,
ed.

son to believe that a
lly violent predator,
procedures set forth
ide. If the superior
s, he or she shall be

ided with program-
rson with treatment

person is a person
n. Treatment does

...

not mean that the treatment be successful or potentially successful, nor does it mean that the person must recognize his or her problem and willingly participate in the treatment program.

(c) The programming provided by the State Department of Mental Health in facilities shall be consistent with current institutional standards for the treatment of sex offenders, and shall be based on a structured treatment protocol developed by the State Department of Mental Health. The protocol shall describe the number and types of treatment components that are provided in the program, and shall specify how assessment data will be used to determine the course of treatment for each individual offender. The protocol shall also specify measures that will be used to assess treatment progress and changes with respect to the individual's risk of reoffense.

6607. (a) If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director shall forward a report and recommendation for conditional release in accordance with Section 6608 to the county attorney designated in subdivision (i) of Section 6601, the attorney of record for the person, and the committing court.

(b) When a report and recommendation for conditional release is filed by the Director of Mental Health pursuant to subdivision (a), the court shall set a hearing in accordance with the procedures set forth in Section 6608.

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

Eli Toney DelRay
Sup. Ct. No. ZM 001979

15 CCR § 2600.1
Register 95, No. 52;
12-29-95, OAL File No. 95-1214-02
[4 pages]

ATTACHMENT
"K"

Digest of New Regulations

December 29, 1995

Regulatory Action: Changes affect title 14, section 1038.**Filed:** 12/28/95, **Effective:** 12/28/95, **OAL File No.:** 95-1113-03**Agency Contact:** Gary Brittner (916) 653-9418**Forestry and Fire Protection, Department of****Modification of requirements for public hearings regarding timber harvesting plans**

Summary: The California Department of Forestry and Fire Protection has revised regulations addressing the rules for public hearings on Timber Harvesting Plans (THPs) held in counties with special local rules.

The amendments add Nonindustrial Timber Management Plans (NTMP) as plans on which the counties can request a public hearing. The deadline for requesting a public hearing is extended until one calendar day after the preharvest inspection. The request, which must be for a specific plan that has been accepted for filing by the Department, shall be made in writing, by phone or by facsimile. The earliest date for which a hearing can be scheduled has been changed to five days from the date of the request, rather than seven days, as previously specified.

Regulations requiring public notice of any proposed hearing previously stated that notice shall be given within two days of the date on which the timber harvesting plan is filed. As amended, public notice must be given at least five days before the hearing is held. The listing of persons that must be provided with notice has been changed to the county, the review team members and those required to be notified of the plan pursuant to 14 CCR 1032.7(e). The amendments require a notice to be published in a local newspaper, whereas previous regulations only required notice to be sent to a local newspaper.

The amendments remove language requiring the hearing to be scheduled after the preharvest inspection. The amendments state that the purpose of the hearing is to gather information from the public regarding the proposed timber operation, and that the hearing shall be an integral part of the multidisciplinary review of the plan.

A Department representative shall conduct the hearing; the presence of the review team chairman at the hearing shall no longer be required. Also, the Department shall no longer be required to provide a separate set of official responses to issues raised during the hearing; rather, the issues will be addressed in the Department's official response to issues raised during the review of the plan or NTMP. Regulatory language specifying a time limitation for oral comments and the time period for acceptance of written comments has been repealed.

Regulatory Action: Changes affect title 14, sections 1115, 1115.1, 1115.2, 1115.3 and 1115.4.

Filed: 12/28/95, **Effective:** 12/28/95, **OAL File No.:** 95-1213-09**Agency Contact:** Gary Brittner (916) 653-9418**Conservation, Department of****Nonsubstantive amendments to regulations governing recycling centers**

Summary: The Department of Conservation has made non-substantive amendments to regulations governing recycling programs. All references to "processing fees" have been changed to refer to "processing payments." Other amendments clarify the relationship of the supermarket or dealer to the recycling center for purposes of fulfilling the reporting requirements.

The amendments also provide the latest revision date for the Handling Fee Application Form. Applicable handling fees (when those fees are not based upon container count) have been reduced from \$2300 to \$2000. The information to be contained within an appeal from handling fees no longer has to include the corresponding convenience zone number.

The amendments also correct existing and provide new references to statutory law.

Regulatory Action: Change without regulatory effect. Changes affect title 14, sections 2000, 2040, 2090, 2110, 2425, 2430, 2505, 2517, 2518, 2519, 2530, 2540, 2545, 2950, 2960, 2965, 2980 and 2985.

Filed: 12/28/95, **Effective:** 1/1/96, **OAL File No.:** 95-1201-01**Agency Contact:** Betty Fernandez (916) 322-1899**Title 15****Prison Terms, Board of****New regulation addresses the provision of probable cause hearings to determine sexually violent predator status**

Summary: The Board of Prison Terms has adopted a new regulation on an emergency basis concerning the placement of a hold upon an inmate or parolee in revoked status in order to conduct a probable cause hearing to determine whether that person shall be designated as a sexually violent predator.

Statutory law provides that a person may be committed to the Department of Mental Health if he or she has been sentenced for sexually violent offenses against two or more victims, and has been diagnosed with a mental disorder that predisposes that person toward the commission of criminal sexual acts. Persons designated by the Director of Corrections as sexually violent predators within the meaning of the statute are subject to psychiatric screening by the Board of Prison Terms and the Department of Corrections.

The new regulation states that, upon notification that there is some evidence to believe that an inmate or parolee in revoked status is a sexually violent predator within the meaning of the statute, the Board may order the imposition of a temporary hold on that person for up to three working days pending a probable cause hearing. If it is necessary to retain counsel or an interpreter, the temporary hold period may be extended.

If, upon the conduct of a hearing, the Board finds probable cause that an inmate or parolee in revoked status is a